

MAKE FEDERAL AGENCIES RESPONSIBLE AGAIN

*A Regulatory, Compliance and Enforcement Plan to
Help Build Infrastructure, Encourage Job Growth and
Cut Red Tape*

AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Quality People. Quality Projects.



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INTRODUCTION

The time has come to make federal agencies responsible again. The regulatory onslaught of the past eight years—on top of decades of existing regulatory regimes—has exacted a toll on the ability of construction contractors to hire new employees, remain competitive and continue to innovate and build the nation’s civil and social infrastructure.

For every perceived problem, many federal agencies have sought regulatory “solutions.” Oftentimes, those solutions fail to adequately—let alone comprehensively—solve the alleged ills they seek to address. Instead, a new regulation is generally stacked on top of a host of existing regulatory requirements without sufficient consideration of its overall impact on the greater regulatory compliance and enforcement scheme. The result is a chaotic patchwork of federal mandates that often create considerable economic hardship on the construction industry—especially small businesses—amounting to fewer construction projects built and fewer construction jobs available.

There are a variety of studies that detail the draconian impact of this federal regulatory pattern. Some of these studies have found that:

- Federal regulatory compliance costs reached \$1.885 trillion in 2015. To put this in perspective, regulatory compliance costs exceed the \$1.882 trillion that the U.S. Internal Revenue Service is expected to collect in both individual and corporate income taxes from 2015.
- The average time for approval of infrastructure projects is six years. Some \$3.7 trillion has been spent as a result of these delays for infrastructure projects ranging from roads and bridges, locks and dams, drinking and waste water treatment facilities, and power plants and transmission lines.
- The federal government has imposed \$808 billion in regulatory costs on business since 2008. For every ten percent increase in regulatory costs, there is a five to six percent fall in the number of businesses with fewer than 20 employees. Over 90 percent of construction businesses have fewer than 20 employees.

In addition to squeezing the construction industry with unreasonable regulation after unreasonable regulation, many federal agencies engage with the construction industry as opponents rather than partners seeking a sensible regulatory path forward. The upshot is less informed regulations, more litigation and less opportunity to build the civil and social infrastructure that helped make America the world’s only economic and cultural superpower.

The Trump administration will have a wide range of options to make federal agencies responsible again. Some of these options can be instituted rather quickly under the authority of the executive branch. Others may face time consuming statutory and institutional challenges. In this plan, the Associated General Contractors of America (AGC) puts forth a range of options the new administration should consider when addressing the regulatory challenges the our nation’s construction industry, infrastructure and economy face. In addition, the AGC puts forth a set of specific recommendations concerning the litany of executive orders, presidential memoranda, rules, guidance, and policy statements issued during the Obama administration that the Trump administration should repeal, tweak or keep.

IMPLEMENTING THE PARADIGM SHIFT FROM INDUSTRY OPPONENT TO PARTNER

To regulate any industry effectively and efficiently, it is essential that regulators have a realistic, working understanding of the industry for which they regulate. Federal regulators are not in the business of construction. Their staff does not lay asphalt, erect steel beams or operate cranes on a construction site. The construction industry does.

For the last eight years, many regulators have not engaged with the construction industry. Yet, they have regulated it immensely. Federal employee conference attendance at industry events has been severely restrained. Industry days at federal offices have been reduced. In general, all avenues through which regulators can obtain a first-hand or in-person understanding of the industry they regulate have been curtailed. While some agencies held “listening sessions” with the industry, these often proved to be check-the-box activities where little substantive engagement was even possible. The consequences have been seen in many regulations that do not fit the industry and create more problems. All of this has led to an expanded level of distrust between the construction industry and federal agencies.

The Trump administration can quickly implement a paradigm shift within federal agencies that allows them to regulate the industry and enforce the law in a coherent and reasonable manner. First, the administration can work through the executive branch agencies of the Office of Management and Budget, Office of Personnel Management, Office of Federal Procurement Policy and Office of Government Ethics to provide guidance on how to properly engage the construction industry as partners. As partners, these federal officials should again participate in industry events, meetings and other engagements as a means to understand the impacts of their regulations and other actions.

The concept of federal agencies productively and earnestly partnering with private industry on regulatory and procurement issues is neither a Democratic or Republican idea. Past administrations from both political parties have encouraged open communication and real consideration of industry concerns. For example, major components of President Clinton’s National Partnership for Reinventing Government Initiative were to focus regulators on compliance, not enforcement; encourage federal employees to get out of Washington to gather honest feedback from stakeholders; and foster the relationship between regulators and the regulated community.

Policies must additionally be put forth to recalibrate enforcement initiatives and focus more agency resources on compliance education and industry collaboration efforts.

RESTORING SENSIBLE FEDERAL AGENCY ENFORCEMENT EFFORTS

AGC and its members have long advocated for fair competition in the private and public market. Fair competition is predicated on everyone following the law. Bad actors that violate the law should be held responsible. Nevertheless, many regulatory and enforcement initiatives over the last eight years have not focused on the bad actors. Instead, agencies increasingly engaged in overzealous audits and investigations of construction contractor businesses, ensnaring the innocent along with bad actors. In these instances, contractors are often presumed guilty until the agency is otherwise satisfied.

To restore sensible federal agency enforcement of the law that targets bad actors, the Trump administration should withdraw current, unreasonable enforcement efforts at the Department of Justice (DOJ). For example, DOJ should unwind its efforts to investigate and enforce alleged violations of the worker safety law through environmental statutes as a means to inflict harsher fines and significant jail time. Such endeavors encourage prosecutorial fishing expeditions at the expense of taxpayers, rather than well-reasoned, calculated investigations focused on facts. Similarly, the DOJ should withdraw Deputy U.S. Attorney General Sally Q. Yates’ memorandum from September 2015 under which DOJ seeks to hold individuals responsible for corporate wrongdoing.

In order to curb enforcement efforts ensnaring innocent contractors, the Trump administration must take a more thoughtful and fair approach to enforcement. This includes instating “right to cure” policies, whereby contractors have an opportunity to correct alleged violations before “gotcha” fines and penalties are assessed. The U.S. Environmental Protection Agency (EPA) uses such a method when enforcing its Spill Prevention Control and Counter-Measure program. Similarly, the Occupational Safety and Health Administration (OSHA) allows for “quick fix” incentives for safety and health hazards that are abated by the employer while an inspection is underway. These types of measures should be expanded under the new administration.

The Trump administration should also work to address the “Sue and Settle” approach used at federal agencies, including the EPA. Under this approach, private interest groups use lawsuits that seek to force federal agencies to issue regulations that advance their policy priorities. These lawsuits are used to negotiate rulemaking schedules and other concessions from agencies outside of the traditional regulatory process. There are instances where, rather than fighting the lawsuit, the EPA quickly agrees to special interest demands. Unfortunately, impacted parties, including private citizens and states who may be subject to the regulations at issue, have been denied the opportunity to intervene in these suits as some courts have held that they lack standing to participate.

Again, for construction contractors and federal agencies to partner effectively, agencies should engage in enforcement efforts targeting bad actors, not innocent contractors. Likewise, regulatory agencies must not actively engage in judicial rulemaking tactics that leave the construction industry for which it regulates outside the process.

REESTABLISHING FEDERAL AGENCY REGULATORY COMPLIANCE EDUCATION & COLLABORATION INITIATIVES

The construction industry wants to comply with the law. However, among the greatest challenges the industry has faced is not knowing what the law is or means. Vaguely written regulations can lead to well-meaning industry interpretations to comply that, unfortunately, may not satisfy enforcement agencies. Facing this uncertainty, construction contractors hire attorneys and consultants to help them try to mitigate compliance risks, rather than hiring more carpenters, equipment operators, pipe fitters and laborers to build the high quality roads, schools and hospitals our nation deserves.

To help the over-regulated construction industry hire more people to build infrastructure, and fewer people to comprehend regulations, the Trump administration should require agencies to provide more resources to support industry compliance. Those resources may include more precise interpretive guidance—issued through notice and comment rulemaking and industry engagement—that can provide bright-line rules, best practices manuals or documents, and greater agency engagement in the form of webinars, training sessions and trade group meeting participation.

Many federal agencies must also reengage with the construction industry again. To do so, agency-industry collaboration and recognition programs that were sunset or significantly reduced under the Obama administration, should be revived in the Trump administration. The EPA, for example, terminated the Sector Strategies Partnership, ended all industry recognition and award programs for environmental stewardship, and defunded the Construction Industry Compliance Assistance Center. The U.S. Army Corps of Engineers (USACE) ended award programs that recognized contractor safety. OSHA marginalized its cooperative programs under which businesses, labor groups, and other organizations can work cooperatively with the agency to help prevent fatalities, injuries, and illnesses in the workplace.

After eight years of largely regulating and enforcing rules in a vacuum without substantive industry consideration or participation, it is time to again enable and encourage federal agencies to meet with, recognize and learn from the construction industry in an ethical and substantive manner.

REIGNING IN THE FEDERAL REGULATORY MACHINE

Unlike changing the paradigm in federal agencies, truly reigning in the federal regulatory machine will take a considerable amount of time. There is long-standing statutory and jurisprudential precedent that the new administration will have to effectively navigate. Here, AGC puts forth guidance on a range of strategies the Trump administration should consider in its effort to make federal agencies responsible again.

REASONABLY HALTING NEW OR PENDING FEDERAL RULES, GUIDANCE AND POLICIES

AGC supports halting new or pending federal rules, guidance and policy on January 20, 2017. Nevertheless, certain pending rules—if delayed—could have significant deleterious impacts upon the construction industry throughout the nation.

Former White House Chiefs of Staff Andrew Card and Rahm Emanuel issued regulatory freezes upon the swearing in of Presidents George W. Bush and Barack Obama, respectively. The memoranda required presidential appointees of the new president to review and approve federal agency proposals or final regulations scheduled for publishing in the Federal Register after noon on Inauguration Day. The memoranda also provided an exception for regulations relating to health or safety or other “urgent situations.” AGC would like to make you aware of several current rulemakings that may not be finalized by Inauguration Day, but should be allowed to precede without delay under either these exceptions.

Federal permits are an essential requirement for many construction projects. Such permits currently under review—and that would otherwise expire in March 2017—are the USACE Nationwide Construction Permits. Failure to allow these permits to be finalized could halt construction projects where such permits are required. The cost ramifications could be severe as a result of project delay.

Similarly, the Occupational Health and Safety Administration is undertaking efforts to issue a new crane operator certification before November 2017. The rulemaking process underway to meet this deadline should be allowed to continue. If the certification expires, construction cranes throughout the nation will not operate and public and private construction would be stymied.

Unlike the Card or Emanuel memoranda, however, AGC encourages the Trump administration to also prohibit federal agencies, with limited exception, from issuing new guidance, policy or other interpretative documents until the new administration has had an opportunity to review it. These agency documents—while not necessarily granted the force of law—can have a practical, force of law impact on the construction industry just as a rule issued through notice and comment in the Federal Register.

ESTABLISHING A WORKABLE FEDERAL HIRING FREEZE

AGC cautions the Trump administration against establishing a strict, across-the-board federal civilian employee hiring freeze. Many civilian federal employees are essential to processing federal construction permits and other construction project approvals. Similarly, the federal government has a vast acquisition workforce whose responsibility is to procure hundreds of billions of dollars worth of goods and services, including construction services. As such, AGC recommends that any hiring freeze of the civilian workforce exempt those federal employees involved in processing permits or are a part of the acquisition workforce. To do otherwise would unnecessarily delay needed construction projects—private and public—across the nation.

ADDRESSING EXECUTIVE OVERREACH: EXECUTIVE ORDERS AND PRESIDENTIAL MEMORANDA

President Obama issued a host of executive orders and presidential memoranda directing federal agencies to undertake a wide range of initiatives. AGC contends that President Obama exceeded his constitutional authority

or—at a minimum—overly burdened the construction industry with many of those executive actions. We provide detailed explanations and recommendations for many of these actions in the appendix of this document. However, we would like to highlight five items of particular concern to our industry:

1. Use of Project Labor Agreements for Federal Construction Projects, Executive Order 13502;
2. Fair Pay and Safe Workplaces, Executive Order 13673;
3. Establishing Paid Sick Leave for Federal Contractors, Executive Order 13706;
4. Updating and Modernizing Overtime Regulations Presidential Memorandum; and
5. Advancing Pay Equality through Compensation Data Collection Presidential Memorandum.

We strongly recommend that these five executive actions be on top of the Trump administration repeal agenda. The new administration may take a variety of avenues to get there: engaging Congress to undertake the Congressional Review Act; rescinding the executive orders and presidential memoranda; or unwinding the various implementing rules through the rulemaking process.

UNWINDING UNFOUNDED, UNNECESSARY, UNWORKABLE AND UNLAWFUL FEDERAL AGENCY REGULATIONS, GUIDANCE AND POLICIES

With tens of thousands of new federal regulations, interpretive guidance and agency policy issued over the last eight years, there is a target rich environment for unwinding unfounded, unnecessary, unworkable and unlawful federal agency actions. The greatest challenge the Trump administration will have is prioritizing its efforts to return reason to the regulatory scheme. Five high priority places for the new administration to begin include:

1. The Occupational Safety and Health Administration’s Silica Rule as well as its Controversial Position on Employee Drug Testing in the Context of Injury and Illness Reporting;
2. The Environmental Protection Agency’s “Waters of the United States Rule;”
3. The Internal Revenue Services’ Transfer Tax Rule on Family-Run Businesses;
4. The Wage and Hour Division’s Doubling of the Overtime Salary Threshold Rule; and
5. The Department of Transportation’s Local Hiring Rule and Pilot Program.

Again, AGC provides detailed explanations on and recommendations for these and many other rules, guidance and policies promulgated under the Obama administration in the charts at the appendix of this document. These items, nevertheless, should be among the top items for repeal.

ENSURING SENSIBLE, FEASIBLE AND REASONABLE REGULATION THROUGH REFORM

In addition to reviewing and correcting the regulatory misadventures of the past, the Trump administration has an opportunity to right the regulatory ship of the future. There are many reform efforts that require legislative action. AGC is supportive of reforms that enable greater congressional checks on rulemaking, increase public participation in the regulatory process, instruct agencies to choose the least costly regulatory options, require on-the-record hearings to help ensure sound scientific and economic data is put forth by agencies, and providing for more rigorous legal review of costly regulations, among other things. AGC encourages President-elect Trump and his administration to pass these and other legislatively-necessary and executively-sufficient reforms to the regulatory process.

However, it is not enough to simply redress problems with the Administrative Procedures Act and other regulatory process statutes through the legislative process. To help build infrastructure, encourage job growth and cut red tape, the Trump administration must address the broken federal construction project review and permitting system.

MAKING THE CONSTRUCTION PROJECT REVIEW & PERMITTING PROCESSES EFFICIENT

President Obama famously stated that, “there’s no such thing as shovel-ready [construction] projects.” For example, just to raise New York’s Bayonne Bridge—and avoid the multi-billion dollar expense of building a new bridge or tunnel—the project waded through a five year process with a 10,000 page environmental assessment and an additional 10,000 pages of required permitting and regulatory materials. Deepening the Port of Savannah has been delayed for almost 30 years, including 14 years of environmental review alone. Given the various regulatory reviews necessary to issue federal permits, President Obama’s statement is sadly true. However, it does not have to be. And, it should not be accepted.

AGC and the construction industry challenge this administration to put America on a path towards shovel-ready construction projects. To do so, the Trump administration will have to work with Congress and federal agencies on streamlining environmental and regulatory permitting reviews that are mandated by statute. Though President Obama and federal agencies sought to maximize review efficiencies by conducting concurrent agency reviews, creating a permit dashboard and establishing some centralization in permitting decision making, those efforts do not go nearly as far as needed.

Foremost among Trump administration permitting reforms should be to establish a six month time limit for completing all federal National Environmental Policy Act reviews. If no decision has been made by the end of those six months, the project should automatically be allowed to move forward. In addition, the administration and Congress should establish a loser-pays provision requiring any plaintiff who files a legal challenge to block an infrastructure project to pay all related legal fees if their challenge is unsuccessful.

AGC does not recommend the new administration stop there. Opportunities exist to reduce permitting and regulatory review delays within the operations of EPA, USACE and the Fish and Wildlife Service, among other agencies. Efforts should be undertaken to reduce the number of agencies involved in the various approval processes to allow construction projects to move forward. It’s difficult enough to have one agency make a decision. But, when dozens are involved—at a federal, state and local government level—it’s no wonder why we wait decades to undertake significant infrastructure improvements. Not only should the Trump administration reduce the number of agencies needed to conduct the countless regulatory and permitting reviews, it should also have one agency authorized to and held accountable for moving projects through the process.

AGC looks forward to working with the new administration on these initiatives and others to make federal review and permitting processes meet today’s infrastructure demands and needs.

REINVIGORATING COMPETITION IN FEDERAL AND FEDERALLY-ASSISTED CONSTRUCTION PROJECT PROCUREMENT & DELIVERY

Federal and federally-assisted construction projects include significantly more paperwork, reporting and other requirements than private construction projects. These many additional requirements often drive competition away from bidding on these projects, which can lead to higher prices to the taxpayer without, necessarily, higher quality infrastructure delivered. There are several procurement areas the Trump administration should endeavor to engage in reform efforts. Those include, but are not limited to:

- Reforming the Implementation of the Davis-Bacon Act and its Prevailing Wage Based on Reality in the Market and Feasible Solutions;
- Eliminating Unworkable “Buy America” and “Buy American” Requirements;
- Rethinking the Disadvantaged Business Enterprise and Federal Small Business Act Programs to Actually Help Disadvantaged and Small Businesses Develop and Grow;

- Revamping the Federal Acquisition Regulation to More Realistically Provide for Innovative Project Delivery Methods and to Eliminate Procurement Tools, Like Reverse Auctions, That Do Not Work For Construction Services; and
- Holding the Federal Acquisition Workforce Accountable for Indecision and Project Delays.

AGC and its membership have ongoing forums within the association that are constantly addressing and reassessing reform ideas based on these—and other—major themes. AGC looks forward to putting forth more robust reform plans in these areas to help the new administration deliver more infrastructure—both horizontal and vertical—in a safe, efficient and effective manner.

CONCLUSION

The legacy of the Obama administration is written in hundreds of thousands of pages of the Federal Register in the form of more than 20,000 regulations issued since 2009. As of today, there are approximately 3,320 federal regulatory actions at various stages of development. Of those, 1,019 are in the “final rule” stage and near ready for issuance before Inauguration Day 2017.

Not every one of those regulations, however, should be a high priority for the Trump administration to address. Some of them help provide certainty to the construction industry. Some, in fact, help resolve problems in a fairly reasonable manner. Nevertheless, there are far more executive orders and presidential memoranda, federal regulations, guidance documents and policy statements that the construction industry find hurt its ability to build America.

The purpose in putting together this document for the incoming administration is to provide a prioritized regulatory guide that will help President-elect Trump fulfill his campaign promise to rebuild the nation’s infrastructure and ensure that it is “second to none.” In the pages that follow, AGC puts forth a detailed guide. Much like the roads some our members construct, we have built within these pages a smooth road ahead for the Trump administration to prioritize construction industry regulations for repeal, tweaking or keeping.

We hope that in addition to considering those regulations with which we conclude this document, the Trump administration does not forget the important priorities with which we began this document. Among the paths of least federal regulatory resistance, is the ability of the president and his or her administration to change within federal agencies the paradigm of “construction industry opponent” to “construction industry partner.” We look forward to the swift shifting of this paradigm and to working on the many priorities put forth here for the next several years to come with the Trump administration.

Executive Orders & Presidential Memoranda (Repeal, Tweak, Keep)

December 20, 2016

Regulatory Action Title	Type of Regulatory Action	Publication Date	Impact on Construction Industry	AGC Resources
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Executive Orders & Presidential Memoranda to Repeal				
Use of Project Labor Agreements for Federal Construction Projects, Executive Order 13502	Exec. Order	2/6/09	This executive order encourages federal agencies to mandate project labor agreements on projects valued at \$25 million or more. AGC recommends that President Trump revoke this order and replace it with former President George W. Bush’s PLA Executive Order 13202 . 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. In cases where use of a PLA would benefit a particular project, the construction contractors otherwise qualified to perform the work would be the first to recognize that fact and to adopt a PLA voluntarily. They would also be the most qualified to negotiate the terms of such an agreement. AGC recommends that President Trump repeal this EO and reinstate EO 13202.	<ul style="list-style-type: none"> • AGC PLA Website • Recent PLA Letter to Agency
Fair Pay and Safe Workplaces Executive Order 13673 (Blacklisting)	Exec. Order	7/31/14	The executive order 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. This rule adds another layer of bureaucracy that will neither improve economy nor efficiency in federal procurement. Rather, it will delay procurements, increase litigation and protests, and drive competition out of the federal procurement marketplace. AGC recommends that President Trump repeal this EO.	<ul style="list-style-type: none"> • AGC Blacklisting Website • AGC Comments • AGC Testimony
Establishing Paid Sick Leave for Federal Contractors, Executive Order 13706	Exec. Order	9/7/15	The requirements of this executive order 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. AGC recommends that President Trump repeal this EO.	<ul style="list-style-type: none"> • AGC Comments • AGC Testimony • AGC Newsletter Story

Executive Orders & Presidential Memoranda (Repeal, Tweak, Keep)

December 20, 2016

Regulatory Action Title	Type of Regulatory Action	Publication Date	Impact on Construction Industry	AGC Resources
Advancing Pay Equality Through Compensation Data Collection	Pres. Memo	4/8/14	The presidential memorandum led to a revised form from the EEOC—a revised EEO-1 report—that is 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. AGC recommends that President Trump repeal this directive.	<ul style="list-style-type: none"> • AGC Testimony
Updating and Modernizing Overtime Regulations	Pres. Memo	3/13/14	The presidential memorandum led to a DOL rule that 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. AGC recommends that President Trump repeal this directive.	<ul style="list-style-type: none"> • AGC Comments • AGC Coalition Comments • AGC Testimony
Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment	Pres. Memo	11/3/15	This directive, issued to five federal agencies and governing mitigation of resource impacts from permitting for projects and activities appears to create sweeping new statutory authority through unilateral executive action, and represents a substantial re-write of public land use and water policy. Many of the terms used in the memorandum to describe resources requiring mitigation from projects—including ‘important,’ ‘scarce,’ ‘sensitive,’ and ‘irreplaceable’—are not found in existing statutes and are largely undefined in the memorandum. The vague and overbroad terms will likely lead to legal uncertainty for many currently permitted projects. FWS has proposed a new compensatory mitigation policy to implement this memorandum. AGC recommends that President Trump repeal this directive.	
The Federal Flood Risk Management Standard, Executive Order 13690	Exec. Order	1/30/15	The order expands the definition of “floodplain” (higher flood elevation and expanded flood hazard areas) that all federal agencies must use – and builders must follow – for all federally-approved or funded projects. At the president’s request, FEMA published guidance on how federal agencies should go about implementing the new Federal Flood Risk Management Standard. FEMA also proposed updates to its floodplain management rules. AGC recommends that President Trump repeal this EO.	<ul style="list-style-type: none"> • AGC News Story • AGC Comments
Planning for Federal Sustainability in the Next Decade, Executive Order 13693	Exec. Order	3/19/15	This order requires federal agencies to reduce their direct greenhouse gas emissions at least 40 percent by 2025. Federal agencies also must reduce their energy intensity, improve the efficiency of their buildings, prefer sustainable products and clean technologies, and derive increasing amounts of energy from renewable sources. It also directs the seven largest procuring agencies—i.e. Department of Defense, General Services Administration and Department of Veterans Affairs— to implement procurements that take into consideration contractor GHG emissions. AGC recommends that President Trump repeal this EO.	<ul style="list-style-type: none"> • AGC News Story

Executive Orders & Presidential Memoranda (Repeal, Tweak, Keep)

December 20, 2016

Regulatory Action Title	Type of Regulatory Action	Publication Date	Impact on Construction Industry	AGC Resources
Economy in Government Contracting Executive Order 13494	Exec. Order	1/30/09	This order precludes federal contractors from being reimbursed for “persuader activity” expenses – costs incurred in trying to influence workers’ decisions about whether to form a union or to engage in collective bargaining. AGC recommends that President Trump repeal this EO.	<ul style="list-style-type: none"> • AGC News Story
Notification of Employee Rights Under Federal Labor Laws Executive Order 13496	Exec. Order	1/30/09	This order reverses an order issued by President Bush requiring federal contractors to post a notice informing workers of "Beck" rights (the right not to join a union). This executive order also requires contracting agencies to include a new clause in government contracts forcing the contractor to agree to post a notice containing content issued by the Secretary of Labor in its workplaces. AGC recommends that President Trump repeal this EO.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story
Regulatory Planning and Review Executive Order 13497	Exec. Order	1/30/09	This executive order revokes President George W. Bush’s two amendments (EOs 13258 and 13422) to President Clinton’s EO 12866. Probably the most significant feature of the revoked executive orders was the January 2007 amendment subjecting agencies’ “significant guidance documents” to the OIRA coordination and review process. The stated purpose of this consultation was to ensure that guidance documents with a significant impact on society were subject to appropriate interagency coordination and review prior to their issuance. AGC recommends that President Trump repeal EO 13497 and reinstate the EOs 13258 and 13433.	
Executive Orders & Presidential Memoranda to Tweak				
Scientific Integrity	Pres. Memo	3/9/09	This presidential memorandum calls for ensuring the highest level of scientific integrity in all aspects of the executive branch's involvement with scientific and technological processes. In spite of this memo, questionable science has been used as agency justifications for a wide variety of regulations. For example, agencies are using climate science that predicts outcomes in 80 years or longer as justification for making Endangered Species Act determinations. Such scientific studies make suspect assumptions based on a range of significant variables. AGC recommends that the Trump administration consider limiting the highly suspect scientific studies to truly ensure the highest level of scientific integrity in the executive branch.	

Executive Orders & Presidential Memoranda (Repeal, Tweak, Keep)

December 20, 2016

Regulatory Action Title	Type of Regulatory Action	Publication Date	Impact on Construction Industry	AGC Resources
Regulatory Flexibility, Small Business, and Job Creation	Pres. Memo	1/18/11	The presidential memorandum directs federal agencies, when initiating rulemaking that will have a significant economic impact on a substantial number of small entities, to give serious consideration to whether and how it is appropriate, consistent with law and regulatory objectives, to reduce regulatory burdens on small businesses, through increased flexibility. In practice, however, federal agencies under the Obama administration did not often adhere to the mandates of this memo. AGC recommends that the Trump administration require federal agencies to adhere to the requirements and intent of the Regulatory Flexibility Act that requires the consideration of small business impacts. Any rulemaking processes found to have skirted or not adequately considered the RFA's requirements should be set aside.	
Government Contracting	Pres. Memo	3/4/2009	This presidential memorandum seeks to reduce no-bid, sole source contracts and cost-reimbursement contracts by providing further guidance to federal agencies. AGC supports this effort to prevent agencies from misusing these forms of contracting methods, as the association has long supported fair and open competition as well as efficiency in government contracting. AGC recommends that the administration go further to restrict sole source contracting.	<ul style="list-style-type: none"> • AGC News Story
Improving Regulation and Regulatory Review Executive Order 13563	Exec. Order	1/18/11	AGC recommends that the President Trump Administration build upon this executive order. The order addresses the rulemaking process and calls for further public participation, flexible approaches to reduce regulatory burdens and scientific integrity. The order also calls for retrospective analysis of existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.	<ul style="list-style-type: none"> • AGC News Story
Establishing a Minimum Wage for Contractors Executive Order 13658	Exec. Order	2/12/14	This rule provides a minimum wage for federal contractor employees and requires agencies to ensure the contractor is compensated for the increase in labor costs resulting from the annual inflation increases. However, the annual increase unintelligibly drives up wages on a national level. Coverage should not apply to non-laborers or mechanics because the requirement to track hours-worked on projects for these employees is unduly burdensome. AGC recommends making the final rule not applicable to workers who are not laborers or mechanics working on covered projects and eliminating the automatic annual increase.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story

Executive Orders & Presidential Memoranda (Repeal, Tweak, Keep)

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Executive Orders & Presidential Memoranda to Keep

Improving Fed. Permitting and Review of Infra. Projects EO 13604	Exec. Order	3/22/12	This executive order establishes a federal plan detailing a government-wide initiative to modernize the Federal permitting and review process to achieve better projects, improved environmental and community outcomes, and shorter decision-making and review timelines for infrastructure projects. AGC believes that the President Trump administration should build upon this executive order.	<ul style="list-style-type: none"> AGC News Story
Expanding Public-Private Collaboration on Infra. Development and Financing	Pres. Memo	7/17/14	This presidential memorandum establishes a center of innovative transportation finance to help interested governments and private project sponsors, understand, navigate, and use federal transportation infrastructure financing programs to facilitate the use of innovative approaches to finance projects, including P3s. It also establishes an infrastructure finance working group to develop and expand innovative financing mechanisms in government contracting. AGC urges the President Trump administration to build upon the work set forth in this memo.	
Establishing a Federal Earthquake Risk Management Standard EO 13717	Exec. Order	2/2/16	The order encourages federal agencies “to consider going beyond the codes and standards set out in this order to ensure that buildings are fully earthquake resilient.” AGC believes that the President Trump administration should build upon resilient infrastructure initiatives such as this.	<ul style="list-style-type: none"> AGC News Story
Establishing the Hurricane Sandy Rebuilding Task Force EO 13632	Exec. Order	12/7/12	Created a high-level federal team representing 24 agencies to consider a long-term recovery strategy for the states most affected. Charged with preparing a report with recommendations on its findings with specific instructions to think ahead and consider long-term needs for the vulnerable Atlantic Coast states. AGC believes that this executive order represents a proper use of executive power in coordinating federal responses to emergency situations.	
Gulf Coast Ecosystem Restoration Task Force EO 13554	Exec. Order	10/4/10	This executive order concerns the long term recovery following the Deepwater Horizon Oil Spill. By October 5, 2011, the Task Force was charged with development of a restoration strategy that proposes a Gulf Coast ecosystem restoration agenda. AGC believes that this executive order represents a proper use of executive power in coordinating federal responses to emergency situations.	<ul style="list-style-type: none"> AGC News Story

Federal Agency Rules, Guidance, and Policy to REPEAL

December 20, 2016



Agency	Regulatory Action Title	Type of Regulatory Action	Publication Date	Impact on Construction Industry	AGC Recommendations	AGC Resources
SAFETY & HEALTH						
DOL/ OSHA	Permissible Exposure Level (PEL) for Silica	Final Rule	3/25/16	The rule puts forth a technologically unmeasurable—and hence unattainable—exposure limit for silica dust in the workplace. An AGC coalition report found that the proposed rule would cost the construction industry alone \$5 billion per year to comply—roughly \$4.5 billion per year more than OSHA estimated. The group also estimates that that the proposed rule would lead to the loss of more than 33,000 full-time jobs in construction.	AGC recommends that OSHA end its pursuit of legal action supporting this rule. Additionally, AGC recommends that the agency issue an interim final rule suspending the regulation and promulgate a notice for proposed rulemaking to rescind this rule.	<ul style="list-style-type: none"> • AGC Coalition Comments • AGC News Story • AGC Backgrounder and Message
DOL/ OSHA	Electronic Tracking of Workplace Injuries and Illnesses (Controversial Drug Testing Position)	Final Rule	3/12/16	Under the rule, OSHA will make public detailed information concerning specific workplace injuries and illnesses, without allowing for meaningful context for such information. In addition, OSHA does not and cannot protect employers or employees from Freedom of Information Act disclosures that could lead to the public release of personally identifiable information. In addition, the rule puts at risk employer drug-free workplace deterrence efforts. Specifically, the rule may restrict employers' ability to test employees after an incident for drugs or alcohol. Unfortunately, statistics show that drug and alcohol abuse is in the double digits in the construction workforce; among the highest of any industry workforce. All reasonable means to deter drug and alcohol abuse on construction sites—where innocent mistakes can cost a life—must be permissible.	AGC recommends that OSHA end its pursuit of legal action supporting this rule. Additionally, AGC recommends that the agency issue an interim final rule suspending the regulation and promulgate a notice for proposed rulemaking to rescind this rule.	<ul style="list-style-type: none"> • AGC Coalition Comments • AGC News Story • Congressional Hearing Letter

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Agency	Regulatory Action Title	Type of Regulatory Action	Publication Date	Impact on Construction Industry	AGC Recommendations	AGC Resources
DOL/OSHA	Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness	Final Rule	12/19/16	The proposal seeks to set an unlawful statute of limitations (SOL) for recordkeeping violations. The agency's five year statute of limitations was found to be unlawful by the DC Circuit Court of Appeals in AKM LLC d/b/a Volks Constructors v. Secretary of Labor , as the OSH Act only statutorily requires a six month SOL for recordkeeping violations. Now, the agency has established the unlawful five year SOL through rulemaking.	AGC recommends rescinding this final rule and for the Trump administration to not litigate lawsuits challenging the rule.	<ul style="list-style-type: none"> • AGC Coalition Comments • AGC Coalition Testimony
DOJ	Criminal Prosecutions of Worker Safety and Environmental Law Violations	Guidance MOU b/w DOL and DOJ	9/17/15	Environmental and worker safety violations are being merged under DOJ's new " Worker Endangerment Initiative ," 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.	AGC recommends that the incoming Attorney General withdraw this guidance and MOU and revisit the scope of this initiative.	<ul style="list-style-type: none"> • AGC News Story
DOJ	Individual Accountability for Corporate Wrongdoing	Guidance	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.	AGC recommends that the incoming Attorney General withdraw this guidance.	<ul style="list-style-type: none"> • AGC News Story

Federal Agency Rules, Guidance, and Policy to REPEAL

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Agency	Regulatory Action Title	Type of Regulatory Action	Publication Date	Impact on Construction Industry	AGC Recommendations	AGC Resources
DOL/OSHA	Letter of Interpretation Granting Union Reps Walk Around Rights at Non-Union Workplaces	Guidance	2/21/13	Under this letter of interpretation, union officials or community organizers will be allowed to participate in “walk around” OSHA inspections at non-union workplaces. The interpretation will undermine the focus on safety of these inspections and turn them into opportunities for unions, or other parties, to enhance campaigns against the employer, gain entry to the employer’s premises to develop more information for the campaign, or even glean proprietary information.	AGC recommends that this letter of interpretation be rescinded.	<ul style="list-style-type: none"> • AGC Coalition Letter
DOL/OSHA	Local Building Inspectors Partnership	Policy	5/11/10	This policy provides building inspectors the authority to act as an extension of OSHA enforcement while lacking the specific knowledge and expertise to properly assess construction hazards. The training of the building inspectors as stated in the letters would be merely a 90 minute course which is inadequate to properly educate the building inspectors in the proper identification of the hazards mentioned in the letter.	AGC recommends that this partnership be abandoned.	<ul style="list-style-type: none"> • AGC News Story
LABOR RELATIONS						
NLRB	Representation-Case Procedures (“Quickie” or “Ambush” Elections Rule)	Final Rule	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 recommends that the rule be rescinded and replaced with a more balanced process such as that set forth in the Workforce Democracy and Fairness Act (S. 933 and H.R. 1768).	<ul style="list-style-type: none"> • AGC Comments • AGC News Story • AGC Webinar Recording

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Agency	Regulatory Action Title	Type of Regulatory Action	Publication Date	Impact on Construction Industry	AGC Recommendations	AGC Resources
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DOL/OLMS	Persuader Agreements: Employer and Labor Relations Consultant Reporting Under the LMRDA	Final Rule	3/24/16	The rule expands—beyond reason—the scope of reportable persuader activity for employers and outside labor relations consultants, including lawyers, and significantly limits the advice exemption from reporting contained in the Labor-Management Reporting and Disclosure Act. The new reporting obligation may well have a chilling effect on employers’ willingness and ability to seek advice from needed experts.	AGC recommends that the rule be rescinded. The American Bar Association and the Association of Corporate Counsel, as well as numerous state attorneys general, strongly opposed the DOL revisions to the advice exemption because the mandated disclosures would force lawyers to reveal attorney-client confidences.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story • AGC News Story
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HUMAN RESOURCES & TRAINING, EDUCATION & DEVELOPMENT

DOL/WHD	Doubling Salary Threshold for Overtime Consideration	Final Rule	5/23/16	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.	AGC recommends that this rule be rescinded.	<ul style="list-style-type: none"> • AGC Comments • AGC Coalition Comments • AGC Testimony
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EEOC/OMB	Increasing Pay Equity Data Reporting in EEO-1 Form Pres. Memo 4/8/14	Required Data Report Form	9/29/16	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 irradiation of wage discrimination in construction because there is scant evidence that such discrimination exists.	AGC recommends that this form be rescinded.	<ul style="list-style-type: none"> • AGC Comments • AGC Testimony • AGC News Story
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Federal Agency Rules, Guidance, and Policy to REPEAL

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Agency	Regulatory Action Title	Type of Regulatory Action	Publication Date	Impact on Construction Industry	AGC Recommendations	AGC Resources
DOL/ WHD	Joint Employment Under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act	Guidance	1/20/16	Companies that are engaged in multi-participant arrangements such as subcontracting, joint ventures, staffing services, employee leasing, temporary help, certain kinds of "job sharing," dedicated vendors/suppliers, and so on could be on the hook for alleged FLSA (or MSPA) violations affecting the workers performing services in these arrangements. "Joint employment" is not a new concept, of course, but DOL's guidance portends both an expansive interpretation of those principles and an aggressive agency enforcement posture.	AGC recommends that this guidance be rescinded.	<ul style="list-style-type: none"> • AGC News Story
DOL/ WHD	Application of the Davis Bacon and Related Acts requirement for additional wage classifications	Guidance	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 recommends that Memorandum No. 213 be rescinded 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"> • AGC News Story

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ENVIRONMENT						
EPA	Citizen Enforcement Lawsuits (All federal environmental statutes, except Pesticides Act, allow “any citizen” to bring a “civil action on his own behalf” against “any person” who is alleged “to be in violation” of a standard or order issued under the statute)	Sue & Settle Policy (unwritten)	Increased prevalence over last 8 years	Suits used to negotiate rulemaking schedules and other concessions from agencies outside of the traditional regulatory process. Many environmental rules are on EPA’s regulatory agenda because of court ordered settlement agreements. Interest groups will sue the EPA, demanding the agency issue a regulation on an accelerated timeframe. Rather than fighting the lawsuit, EPA quickly agrees to demands; settlement reached after closed-door ex parte negotiations. This practice goes against public participation and transparency protections of the Administrative Procedure Act (APA) and has become a tool to force EPA to issue many more regulations than would otherwise be written.	AGC recommends amending Citizen Suit Provisions - federal rules and regulations are complex and cumbersome and should be enforced only by trained staff of government agencies. Potential reforms include: limiting citizen suit penalties to violations of objective, numeric limitations rather than subjective, narrative standards; extend "notice period" beyond the current 60 days (giving reg. agencies more time to review notice of intent letters and initiate formal actions); clarify definition of “diligent prosecution” of alleged violations, thereby allowing fed/state authorities to exercise their primacy in enforcement and preventing unnecessary citizen suit intervention.	AGC News Stories: <ul style="list-style-type: none"> • EPA’s Sue and Settle Strategy • AGC News Story Other Resources: <ul style="list-style-type: none"> • US Chamber of Commerce
EPA/ OECA	Next Generation Compliance/ Enforcement	Strategy	Summer 2013	EPA is focused on integration of compliance / enforcement data from EPA info systems to its Enforcement and Compliance History Online (ECHO) website . Concepts of the strategy have merit; however, it is being implemented across EPA without necessary consideration of business' data quality concerns, security, ownership, competition, etc. Providing public with too much information without proper context will cause harm and waste enforcement resources chasing false lead.	AGC recommends that the agency revisit and revise the implementation and transparency aspects of the NextGen Strategy.	<ul style="list-style-type: none"> • AGC News Story

Federal Agency Rules, Guidance, and Policy to REPEAL

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Agency	Regulatory Action Title	Type of Regulatory Action	Publication Date	Impact on Construction Industry	AGC Recommendations	AGC Resources
EPA/OW	Definition of WOTUS	Final Rule	6/29/15	This rule 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 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.	While there are legal challenges pending, AGC recommends Congress repealing the WOTUS rule. Congress needs to define "navigable waters," which is the actual statutory term, not "waters of the United States." AGC also recommends the Scalia Test be used in court.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story • AGC News Story
EPA/OW	Municipal Separate Storm Sewer System Permits: Compendium of Clear, Specific & Measurable Permitting Examples -- Part 1 & Part 2	Guidance	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 recommends the agency revisit 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"> • EPA's website
EPA/OW	CWA Section 404(c) VETO authority	Law & Regs	7/19/2016 (DC Circuit uphold EPA's retroactive veto of Mingo Logan Coal's Section 404 permit)	Courts have upheld EPA authority under the CWA to change, if not revoke, Section 404 "dredge-and-fill" discharge permits that have already been approved and issued by the U.S. Army Corps of Engineers if it determines that the discharge will have an "unacceptable adverse effect" on identified environmental resources. This creates uncertainties for Section 404 permittees, their lenders, and others in business with them. EPA has adopted regulations setting forth the process for implementing Section 404(c). See 40 CFR Part 231.1 et seq.	AGC recommends Congress amend CWA Section 404(c) and - as needed - direct EPA to revise its "unacceptable adverse effect" regulations.	<ul style="list-style-type: none"> • AGC News Story

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Agency	Regulatory Action Title	Type of Regulatory Action	Publication Date	Impact on Construction Industry	AGC Recommendations	AGC Resources
	Integrated Municipal Stormwater and Wastewater Planning	Guidance	6/1/2012	This guidance is meant to help local governments meet CWA water quality objectives and prioritize capital investments. However, EPA has not provided enough flexibility in implementing the policy. Municipalities are facing increasing NPDES permitting program requirements -- the funding gaps are leading to increased infrastructure needs.	AGC recommends Congress provide some relief to allow communities to adopt an integrated planning approach to CWA obligations; the intent is to use the flexibilities in both permits and enforcement to work with communities towards common goals.	
	Regs on Stormwater Permits for Small Cities (MS4s)	Final Rule	12/9/16	This rule 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 recommends the CRA or other legislation is required because this rulemaking is in response to 9th Circuit's order to amend regs to ensure cities stormwater plans are reducing pollution to the "MEP;" possibly need to legislatively re-defining MEP at CWA §402(p)(3)(B)	<ul style="list-style-type: none"> • AGC Comments • AGC News Story
CEQ	NEPA GHG Guidance "Final Guidance for Federal Dept's & Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews"	Guidance	8/1/16	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 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 recommends President Trump direct the new CEQ head to withdraw the guidance and revoke: Executive Order 13693 - - Planning for Federal Sustainability in the Next Decade.	<ul style="list-style-type: none"> • AGC News Story

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EPA/ OAR	NAAQS - Ozone	Final Rule	10/26/16	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 recommends legislation 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"> • AGC Comments • AGC News Story
FWS/ NOAA/ NMFS	Changes to Endangered Species Act Critical Habitat Designations and 'Adverse Modification' Definition	"Services" jointly finalized a policy and two rules imposing major changes to "critical habitat" regulations	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 recommends the agency repeal entirely the rule and policy.	<ul style="list-style-type: none"> • AGC News Story • Huton & Williams Article
SEC	GHG Reporting Requirements	Final Rule	2/10/10	The Securities and Exchange Commission (SEC) released interpretive guidance for public companies to disclose their "climate risks" in an effort to quell concerns from investors. The SEC interpretive guidance gives suggestions on some of the ways companies may be impacted by climate concerns and should disclose those vulnerabilities – such as potential disruptions to operations from extreme weather or reduced water availability, supply chain risks, the impacts of legislation and regulation related to climate change, and changing business trends.	AGC recommends rescinding this rule.	<ul style="list-style-type: none"> • AGC News Story

Federal Agency Rules, Guidance, and Policy to REPEAL

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FEDERAL CONTRACTING

FAR Council	Use of Project Labor Agreements for Federal Construction Projects, Executive Order 13502	Final Rule	2/6/10	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. In cases where use of a PLA would benefit a particular project, the construction contractors otherwise qualified to perform the work would be the first to recognize that fact and to adopt a PLA voluntarily. They would also be the most qualified to negotiate the terms of such an agreement.	AGC recommends that President Trump revoke this rule and the executive order and replace it with former President George W. Bush's PLA Executive Order 13202 .	<ul style="list-style-type: none"> • AGC Comments • AGC PLA Website • Recent PLA Letter to Agency
FAR Council	Fair Pay and Safe Workplaces Federal Acquisition Regulation, Executive Order 13673 (Blacklisting)	Final Rule	8/25/16	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 due processes. 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.	AGC recommends that this final guidance and the executive order be rescinded.	<ul style="list-style-type: none"> • AGC Blacklisting Website • AGC Comments • AGC Testimony

Federal Agency Rules, Guidance, and Policy to REPEAL

December 20, 2016

Agency	Regulatory Action Title	Type of Regulatory Action	Publication Date	Impact on Construction Industry	AGC Recommendations	AGC Resources
DOL/OS	Guidance for Executive Order 13673, "Fair Pay and Safe Workplaces" (Blacklisting)	Executive Order/Final Rule	8/25/16	The guidance establishes an incredibly subjective scheme for which federal contracting officers, with the advice of agency labor compliance advisors, may de-facto debar federal contractors for past and alleged violations of federal and state labor laws.	AGC recommends that this final guidance and the executive order be rescinded.	<ul style="list-style-type: none"> • AGC Blacklisting Website • AGC Comments • AGC Testimony
DOL/ WHD	Establishing Paid Sick Leave for Federal Contractors, Executive Order 13706	Final Rule	9/30/16	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.	AGC recommends that this final rule and the executive order be rescinded.	<ul style="list-style-type: none"> • AGC Comments • AGC Testimony • AGC News Story
FAR	FAR Case 2014-010; Enhancements to Past Performance Evaluation Systems	Final Rule	5/5/15	The rule requires that all past performance information be entered into the Contractor Performance Assessment Reporting System (CPARS), the government-wide past performance feeder system. AGC's primary concern is that CPARS retains all interim data in all final performance evaluations, a significant change from the previous past performance evaluation process. In turn, this change would mean that all interim information would also remain in the Past Performance Information Retrieval System (PPIRS).	AGC recommends a new rule allow for all interim evaluations to be replaced by subsequent interim and final evaluations. If negative interim data remains, despite the contractor having made improvements to address an issue, the contractor may be misjudged by source selection evaluation boards.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story
FAR	FAR Case 2014-004; Payment of Subcontractors	Final Rule	12/20/16	The proposed rule would require prime contractors to self-report late or reduced payments to contracting officers. It is unnecessary and burdensome given existing Prompt Pay Act safeguards and small business subcontractor payment acceleration measures.	AGC recommends that this rulemaking be formally rescinded or abandoned.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story

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Agency	Regulatory Action Title	Type of Regulatory Action	Publication Date	Impact on Construction Industry	AGC Recommendations	AGC Resources
FAR	FAR Case 2008-039; Reporting Executive Compensation and First-Tier Subcontract Awards	Final Rule	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 recommends 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.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story
Federal Gov't Wide	Procurement of Construction Services through Reverse Auction	Policy	N/A	AGC strongly advocates against the use of reverse auction procurement for construction services. The complexities of these processes simply do not compare to the purchase of an off-the-shelf commercial item. The reverse auction process ignores the unique nature of construction. General contractors, specialty contractors, subcontractors and suppliers offer and provide a mix of services, materials and systems. They do not "manufacture" buildings, highways, or other facilities.	AGC recommends that President Trump work to repeal and overturn all agency directives or guidance that allows or pushes for the procurement of reverse auctions for construction services.	<ul style="list-style-type: none"> • AGC Testimony • AGC White Paper • AGC Letter to DOI • AGC Letter to VA • AGC Letter to GSA • Army Corps Report finding against using reverse auctions
FAR	FAR Case 2009-004, Enhancing Contract Transparency	Proposed Rulemaking Withdrawn 2/10/11	5/13/10	The proposal sought to require public posting online of contract actions--contracts, task orders, and delivery orders online. Much of the information that this requirement would mandate is contractors' proprietary information.	AGC recommends that the new administration not undertake a similar effort.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story
FAR	FAR Case 2015-024, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representation	Final Rule	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 recommends that this rule be rescinded.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story

Federal Agency Rules, Guidance, and Policy to TWEAK

December 20, 2016



Agency	Regulatory Action Title	Type of Regulatory Action	Publication Date	Impact on Construction Industry	AGC Recommended Changes	AGC Resources
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SAFETY & HEALTH						
DOL/OSHA	Cooperative Programs	Industry Partnership Programs	N/A	Through OSHA's cooperative programs, groups committed to safety and health leverage resources and expertise to develop compliance assistance tools and resources and share the information with employers and employees to assist in the prevention of injuries, illnesses and fatalities in the workplace. Through its alliances and partnerships OSHA has been able to create quality guidance documents, best practices and Web-based informational resources.	AGC strongly believes that enforcement alone is insufficient in eliminating workplace injuries and illnesses in the construction industry. Cooperative programs are tools that OSHA must return to fully utilizing and supporting.	<ul style="list-style-type: none"> • Statement by Obama Admin's OSHA on Cooperative Programs with AGC and limited budgets
DOL/OSHA	Confined Spaces in Construction	Final Rule Temporary Guidance was issued	5/4/15	AGC was not opposed to OSHA promulgating a rule addressing safety in confined spaces in construction. However, the final rule contains certain provisions that are proving challenging to meet. Specifically, the rescue services provisions are problematic. They pose significant coordination hardships with local first responders and poses problems in the context of remote construction locations, especially rural areas.	AGC recommends that OSHA revisit the current rule to address the various provisions that generate the most significant compliance challenges, such as the rescue service provision.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story • AGC News Story (Temporary Guidance)
DOL/OSHA	Compliance Directive for Roadway and Highway Construction Work Zones	Guidance	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, which is incorporated by the reference of Part VI of the Federal Highway Administration's Manual of Uniform Traffic Control Devices (MUTCD) 1988 Edition, Revision 3, as well as the Millennium Edition (December 2000). Additionally, the directive provides general enforcement guidance on issuing citations for § 5(a)(1) General Duty Clause violations.	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"> • AGC News Story

Federal Agency Rules, Guidance, and Policy to TWEAK

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Agency	Regulatory Action Title	Type of Regulatory Action	Publication Date	Impact on Construction Industry	AGC Recommended Changes	AGC Resources
DOL/ OSHA	Advisory Committee for Construction Safety & Health	OSHA Advisory Group		ACCSH is a continuing advisory body established by statute that provides advice and assistance in construction standards, policy and regulation—under the Construction Safety Act and OSH Act—to the Assistant Secretary of Labor for OSHA.	AGC recommends that the incoming administration reestablish the formal relationship between OSHA and ACCSH and require the agency to consult and consider the recommendations of ACCSH on construction safety and health issues.	
DOL/ OSHA	Multi-Employer Citation Policy	Policy	12/10/10 Decision by OSHRC in Obama Admin. Changed effect of the policy.	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.	AGC recommends that the agency adjust its policy to hold that employers are only legally responsible for protecting the safety and health of their own workers. An Occupational Safety and Health Review Commission decision under the Obama administration overturned a Bush era OSHRC decision on this policy interpretation.	<ul style="list-style-type: none"> • AGC News Story
HUMAN RESOURCES & TRAINING, EDUCATION & DEVELOPMENT						
DOL/ WHD	Establishing a Minimum Wage for Contractors	Final Rule	10/7/14	The rule provides a minimum wage for federal contractor employees and requires agencies to ensure the contractor is compensated for labor costs resulting from the annual inflation increases. However, the annual increase unintelligibly drives up wages on a national level. Coverage should not apply to non-laborers or mechanics because the requirement to track hours-worked on projects for these employees is unduly burdensome.	AGC recommends making the final rule not applicable to workers who are not laborers or mechanics working on covered projects and eliminating the automatic annual increase.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story

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DOL/ OFCCP	Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Veterans	Final Rule	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. Additionally, this quota-like benchmark is intended to reflect the number of veterans available to work in the U.S. without considering the number of veterans who are qualified construction tradespeople or the number of veterans who desire to work in construction. The rule also requires contractors to collect and maintain additional hiring data that reflects the number the covered veterans. These requirements are costly and will not increase the number of veterans hired.	AGC recommends that OFCCP replace the hiring benchmark with the requirement that contractors make good faith efforts to hire covered qualified veterans. Additionally, AGC would like OFCCP to eliminate 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"> • AGC Comments • AGC Coalition Comments • AGC Report • AGC News Story
DOL/ OFCCP	Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities	Final Rule	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, this quota-like utilization goal is intended to reflect the number of individuals with disabilities available to work in the U.S. without taking into consideration the safety-sensitive nature of the construction industry or number of individuals with disabilities who are qualified to work as construction tradespeople with or without an accommodation. Additionally, the rule requires contractors to collect and maintain additional hiring data that reflects the number the covered veterans. These requirements are costly and will not increase the number of individuals with disabilities hired.	AGC recommends that OFCCP replace the utilization goal with the requirement that contractors make good faith efforts to hire covered qualified individuals with disabilities. Additionally, AGC would like OFCCP to eliminate 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"> • AGC Comments • AGC News Story

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DOL/ WHD	Child Labor Regulations	Final Rule	May 20, 2010	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 recommends that the WHD modernize the regulatory guidance associated with the FLSA's Child Labor provisions in regards to the construction industry. Please modernize 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"> • AGC Comments • AGC News Story
DOL/ WHD	The Application of the Davis-Bacon Act to Survey Crews	Guidance	3/22/13	WHD's memorandum left many in the contractor community confused about the application of the Davis-Bacon Act to survey crews. As a result, AGC submitted a letter asking for clarification. Although a letter was returned to AGC with clarification, the text of the memorandum still stands as originally written.	AGC recommends that the WHD re-issue Memorandum No. 212 to reflect the clarified guidance issued in the follow-up letter found to the right.	<ul style="list-style-type: none"> • Clarification Letter in Response to AGC's Request • AGC News Story
ENVIRONMENT						
EPA/ OECA	Inspect and Correct: Cooperative Approach to Enforcement	Policy	Revised Self Audit Policy 12/9/2015	EPA created a web-based "eDisclosure" portal to receive and automatically process self-disclosed civil violations of environmental law. Revisions have created disincentives for industry use. It's too complex for small businesses and calls into question the confidentiality of information released to EPA. The Obama administration also phased out the use other policies/programs designed to help well-intentioned industry achieve compliance and avoid harsh penalties and negative image/reputation.	AGC recommends that the agency develop reforms to help companies discover and promptly correct enviro. problems. Ideas include: reintroducing a process/ protocol for making a voluntary disclosure under EPA's Small Business Compliance Policy; reintroduce Expedited Settlement Offer Policy under NPDES stormwater permit program; and expand the "Right to Cure" protocol.	<ul style="list-style-type: none"> • AGC News Story

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EPA/OECA	Compliance Assistance	Industry Partnership Programs		In early 2009, EPA terminated a long-standing voluntary program—the EPA Sector Strategies Partnership . The termination of this voluntary program, the end of all of EPA's other industry-recognition/award programs, the defunding of the Construction Industry Compliance Assistance (CICA) Center, the agency's year-after-year budget that focuses on enforcement and the administrative support of more and more rules --- all demonstrate that the prior Administration was not interested in educating the regulated community or working with industry to improve environmental performance.	AGC recommends bringing back agency-industry partnership and recognition programs (e.g., Sector Strategies, Performance Track , C&D Recycling Partnership). A recent Environmental Council of States report finds that approximately half of all regional compliance assistance centers are underfunded or about to close.	<ul style="list-style-type: none"> • AGC News Story • General News Story • EPA Administrator Whitman Speech at AGC Event
EPA/OAR	NONROAD Model (Nonroad Engines, Equipment, and Vehicles)	Model	Update initiated early 2016	Primary use is for estimation of air pollution inventories (construction equipment) by state and local air quality planners; serves as a basis for emission reduction regulations.	AGC strongly maintains that EPA must validate its model. AGC learned in early 2016 that EPA had hired Eastern Research Group, Inc., to oversee a NONROAD overhaul.	<ul style="list-style-type: none"> • AGC News Story
EPA/OER	Spill Prevention Control and Counter-Measure (SPCC) Rule Amendments	Final Rule	4/1/2009	EPA eased the compliance burden and costs on contractors covered by the federal SPCC rule; reforms allow "low-risk" construction sites to develop "self-certified" SPCC Plans (in lieu of PE-certification) and use EPA's SPCC Plan template to comply with the SPCC rule, saving approximately \$3,000 per project. But there are still major inefficiencies inherent to the program.	AGC notes that if a contractor has a SWPPP that addresses oil storage and spill control/containment and cleanup measures, then that should satisfy the SPCC plan requirements. Otherwise this is double regulation and each plan costs the contractor significant dollars to develop. In addition, EPA should exempt asphalt cement from the definition of "oil."	<ul style="list-style-type: none"> • AGC News Story

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EPA/OAR	Exceptional Events	Final Rule	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 states attain EPA's tighter ozone NAAQS issued in October 2015.	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"> • AGC News Story
TRANSPORTATION						
DOT	Disadvantaged Business Enterprise: Program Implementing Modifications	Final Rule	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.	AGC encourages DOT to explore creating opportunities for giving incentives to contractors for DBE utilization and to focus the program on business development.	<ul style="list-style-type: none"> • AGC Comments • AGC Supplemental Comments • AGC News Story • DOT IG Report on Issues with DBE Program • AGC DOT Meeting on IG Report

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DOT/ FHWA	Disadvantaged Business Enterprise Prompt Payment and Return of Retainage: Questions and Answers	Guidance	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.	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"> • AGC News Story
FMCSA	Commercial Truck Driver Hours of Service	Final Rule	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 recommends that FMSCA revisit this rule and exempt construction drivers from its application. If no exemption, increase the distance coverage to a 100-air-mile radius for construction industry drivers.	<ul style="list-style-type: none"> • AGC Comments • Supplementary AGC Comments • Previous AGC Comments • AGC News Story

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DOT/ FHWA	Congestion Mitigation and Air Quality (CMAQ) Improvement Program Under MAP-21	Interim Guidance	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 that FHWA encourage states to use a greater share of CMAQ funds for diesel retrofits for off-road construction equipment. AGC also recommends striking the directive encouraging states to seek much as a 50/50 split with the private sector to pay for retrofits. FHWA should also 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"> • AGC Comments • AGC News Story
EPA/ OAR	CAA Section 209 Preemption Provisions - 40 CFR Part 89, Appendix A (also sets forth EPA's interpretation on mandatory non-road retrofits)	Law; regulations	Recent tightening of NAAQS (ozone , fine PM) places focus on off-road equipment emissions	EPA interpretation of states authority under CAA to regulate new as well as old or in-use equipment has lead states to believe they have the authority/discretion to freely impose restrictions on the use/operation of off-road construction equipment as well as broad mandates to retrofit/modify equipment used on public projects.	AGC recommends that the agency revisit this language and its impact on industry. Problems include: worker safety concerns; huge financial impact - particularly harmful to small businesses; technology challenges; costs outweigh benefits; lack of validated air pollution models/inventories.	

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DOT/ FHWA	Model Public Private Partnership Core Toll Concessions Contract Guide	Guidance	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.	FHWA should revisit its approach to risk allocation on these model documents.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story • AGC P3 Website and Resources
FMCSA	Electronic Logging Devices for Hours of Service Enforcement	Final Rule	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.	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.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story

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SAFETY & HEALTH					
DOL/ OSHA	OSHA/NIOSH National Safety Stand Down	Initiative	Launched 2013	The week-long stand down is a voluntary effort for construction employers and their employees to dedicate time during the work week to stop and focus on, and discuss, the issue of fall protection safety in the construction industry. According to the Bureau of Labor Statistics (BLS), falls accounted for 279 (35 percent) out of the 806 total fatalities in construction during 2012. AGC recommends that this initiative continue in the Trump administration.	<ul style="list-style-type: none"> • AGC News Story
ENVIRONMENT					
EPA/ OER	Spill Prevention Control and Countermeasure (SPCC) Enforcement Protocol: Right to Cure	Policy	Launched 2015	AGC supports the goal of keeping pollution out of our water. SPCC enforcement protocol allows inspectors to give verbal feedback at the conclusion of their inspections, and the regulated entity receives "instantaneous feedback" on how to bring site into full compliance as rapidly as possible. In most cases, if you promptly correct any issues, generally within approximately 45 days of inspection, and send a letter back to EPA stating what was corrected, you avoid formal enforcement and penalties. However, if the site/facility has no documented SPCC plan, then there is no chance for informal enforcement.	<ul style="list-style-type: none"> • AGC News Story
EPA/ OW	Construction and Development Effluent Limitations Guidelines (C&D ELG)	Final Rule	2009 Final Rule 2014 Revised Final Rule	Sets the minimum technology requirements to control runoff on active construction sites. This rule includes AGC-supported narrative "best management practice" (BMP) based controls, as opposed to numeric limits on sediment.	<ul style="list-style-type: none"> • AGC News Story
EPA/ OPPTS	LRRP Online Training for Renovator Recertification	Final Rule	4/16/14	AGC strongly supported these amendments to the renovator "refresher" training requirements. The rule revises the federal Lead Renovation, Repair, and Painting (LRRP) rule to allow lead paint renovators to satisfy recertification process via online training course rather than requiring in seat (saving time and money).	<ul style="list-style-type: none"> • AGC Comments • AGC News Story

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EPA/OPPTS	LRRP Dust Sampling	Final Rule	8/5/2011	With industry's strong support, EPA decided against expanding its Lead Renovation, Repair and Painting (LRRP) rule to include lead-dust sampling and clearance testing requirements. AGC played a key role in communicating the construction industry's concerns with the proposed "clearance testing" requirements. AGC worked alongside a coalition of real estate and development groups to present a collective industry voice that has led EPA to refrain from straddling contractors with costly and unnecessary dust wipe sampling and laboratory analysis requirements.	<ul style="list-style-type: none"> • AGC News Story
EPA/OPPTS	Disposal of Coal Combustion Residuals and Preserving the Beneficial Reuse of Fly Ash	Final Rule	12/19/14	AGC has advocated for the need to clarify and preserve the beneficial use of coal ash—if needed—through a regulatory regime that treats the waste as non-hazardous. AGC submitted detailed comments to EPA urging that it weigh the potential impacts of its regulatory options on the beneficial use of these materials and take into consideration the real environmental benefits of reusing these materials and the lack of negative reports (i.e., alleged or proven damage cases) associated with the beneficial use of fly ash in many construction applications including concrete and wallboard. EPA chose to regulate the waste as non-hazardous and has released several tools to promote certain beneficial uses.	<ul style="list-style-type: none"> • AGC News Story
FWS	Methodology for Prioritizing Status Reviews and Findings on Petitions for Listing ESA	Notice	7/27/2016	AGC supports the use of processes for improving the way FWS identifies and prioritizes pending ESA "status reviews" that the agency uses to determine whether a species warrants federal protection.	<ul style="list-style-type: none"> • AGC News Story
TAX					
IRS	Section 385 Debt-Equity Rules for Certain Interests in Corporations	Final Rule	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.	<ul style="list-style-type: none"> • AGC Comments • AGC Additional Comments • AGC News Story

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TRANSPORTATION

DOT/ FAA	Operation and Certification of Small Unmanned Aircraft Systems		6/28/16	This rule sets forth a comprehensive process to allow for the commercial use of small drones in all industries, including construction.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story • AGC WebED Series
DOT	Efforts to improve and expand government-wide permitting reform	President. Memo; Executive Order; and 2014 Plan	2011, 2012, 2014	As part of these efforts, federal agencies previously expedited the review and permitting of over 50 major infrastructure projects, including bridges, transit, railways, waterways, roads, and renewable energy projects, employing common sense practices like running different reviews concurrently rather than sequentially, and using the an online Dashboard to promote accountability for a shared schedule. The new administration should continue to build and expand on these efforts.	
DOT/ FHWA/ FTA	MAP-21 Environmental Streamlining Rule	Final Rule	1/13/14	This rule significantly reduces the environmental review process necessary for projects that are within an existing right-of-way and projects that receive less than \$5 million of total federal funding or projects costing less than \$30 million where federal funds account for less than 15 percent of total project cost. The new rule, as directed by MAP-21, now provides a “Categorical Exclusion” (CE) for projects that meet these definitions. Under a CE a project does not have to go through a full environmental impact analysis as required by the federal NEPA law, thereby significantly reducing the time and costs associated with getting a project approved for construction.	<ul style="list-style-type: none"> • AGC News Story
DOT/ FHWA	Construction Manager / General Contractor Contracting	Final Rule	12/2/16	FHWA issued rules, in response to MAP-21, clarifying procedures that states need to follow when using the Construction Management/General Contractor (CM/GC) contracting method for projects that receive Federal-aid highway funding. AGC supports using this contracting method in a way that will benefit project delivery and at the same time provide open competition and fair risk allocation is of primary importance. FHWA has provided states with much flexibility as long as they stay within the general guidelines established. AGC believes the rules on CM/GC continue this tradition and generally supports the rule.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story

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DOT/ PHMSA	Pipeline Safety: Pipeline Damage Prevention Programs	Final Rule	7/23/15	The rule is based on the premise that though all states have a damage prevention program, some States may not adequately enforce their State damage prevention laws. One of AGC’s primary requests in the proposed rule phase was that PHMSA examine state programs not just from an excavation enforcement perspective, but also from an operator and locator response perspective. While the rule stops short of creating specific provisions to do so, the rule does acknowledge PHMSA’s awareness of the issue and details the tools PHMSA has available to them to enforce operators to respond to locate requests.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story
FEDERAL CONTRACTING					
FAR	FAR Case 2012–009: Documenting Contractor Past Performance	Final Rule	8/1/13	The rule puts forth uniform past performance ratings and factors based on the ratings and factors used in the Contractor Performance Assessment Reporting System (CPARS). The FAR Council did not remove the right for contractors to seek review of past performance evaluations at a level above the contracting officers, as it had initially proposed. This final rule represents a positive step towards standardizing the past performance evaluation process throughout the federal government.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story
FAR	FAR Case 2015–018: Improvement in Design-Build Construction Process	Final Rule	5/16/16	This is an AGC-supported final rule that effectively limits the second-step (“short-list”) of the two-step design-build procurement process for construction to no more than five teams. It provides predictability to industry and reduces government reviews of proposals, as the government.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story

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SAFETY & HEALTH

DOL/OSHA	Crane Operator Qualification in Construction	Pre-Rule Stage	Proposed Rule scheduled for 2/17 Final Rule for extension	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 extended.	AGC recommends that this rule be allowed to go final. To do otherwise would be to jeopardize ongoing construction operations throughout the nation, as they may be shut down.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story • AGC Coalition Effort
DOL/OSHA	Safety and Health Management Program Guidelines	Altering voluntary guidance	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.	AGC recommends that OSHA work with the construction industry to ensure its guidelines make sense in the context of construction. Suggestions are included in AGC's comments.	<ul style="list-style-type: none"> • AGC Comments
DOL/OSHA	Backover Injuries and Fatalities	Pre-Rule Stage	N/A	OSHA is preparing to propose a new rule on vehicles operating either in reverse or with an obstructed view. It would require the use of engineering controls (cameras, radar, sonar, etc.) to minimize or eliminate the number of struck-by incidents on construction sites. A request for information was issued in 2012. OSHA's efforts thus far have not taken into account the dynamics of a construction jobsite, as much of the information the agency has on this stems from quiet warehouse environments and not noisy and complex construction jobsites.	AGC recommends that any further action on this issue undergo thorough industry vetting and undertake all regulatory procedures necessary to ensure the rulemaking is informed by accurate science and incident data and the availability of reasonably priced technological solutions. The agency should undertake necessary rigors of a SBREFA panel for this issue.	

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DOL/OSHA	Permissible Exposure Levels for Chemical Hazards	Pre-Rule Stage	N/A	OSHA made a request for information seeking comments on how the agency can and should update its standards on chemical hazards and exposures. The agency is still deciding how to proceed. The agency should undertake necessary rigors of a SBREFA panel for this issue.	AGC recommends that further action on this topic undergo thorough industry vetting and undertake all regulatory procedures to ensure the rulemaking is informed by accurate science and incident data and the availability of reasonably priced technological solutions.	<ul style="list-style-type: none"> • AGC Coalition Comments
DOL/OSHA	Musculo-skeletal Disorder (MSD) Column for Recordkeeping	Notice of Proposed Rulemaking	5/17/11	This rule requires employers to fill in speculative medical information on OSHA log for injuries for which there is no applicable standard. Requires those maintaining the OSHA 300 log to make medical assessments/diagnosis beyond their capabilities. Would also require additional medical costs to accurately assess/diagnose reported conditions to achieve compliance.	This added paperwork burden does not support a standard that has been issued. OSHA withdrew its proposal in 2011. It should not be revisited.	<ul style="list-style-type: none"> • AGC News Story
DOL/OSHA	Noise in Construction	Pre-Rule Stage	N/A	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 recommends that OSHA not undertake this new rulemaking. OSHA should maintain its current policy, which is feasible. The agency withdrew a previous, similar proposal on noise because it was not feasible.	<ul style="list-style-type: none"> • AGC News Story
DOL/OSHA	Consultation Agreements: Proposed Changes to Consultation Procedures	Proposed Rule	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.	This rule will discourage using OSHA inspectors for preventative safety audits. It should never be promulgated. SHARP is a recognition program that OSHA administers to provide incentives and support for small employers to develop, implement, and continuously improve effective safety and health programs at their worksites.	<ul style="list-style-type: none"> • AGC News Story • Letter from Congress

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DOL/OSHA	Injury and Illness Prevention Program	Pre-Rule Stage	6/22/10	The proposed rule would require employers to establish and frequently update programs to address safety and health hazards that may not be currently regulated.	The rulemaking is unneeded and should not move forward.	
DOL/MSHA	Criteria and Procedures for Assessment of Civil Penalties	Proposed Rule (currently listed for long-term action)	7/31/14	The proposed rule would significantly overhaul the existing penalty assessment procedures. In doing so decades of legal precedence will be eliminated. Additionally, assessments and penalties will be inflated without justification.	This rulemaking is unneeded and should not move forward. The proposed rule should be withdrawn.	<ul style="list-style-type: none"> • AGC Comments
HUMAN RESOURCES & TRAINING, EDUCATION & DEVELOPMENT						
DOL/OFCCP	Requirement To Report Summary Data on Employee Compensation	Proposed Rule	8/8/14	The EEOC announced that this OFCCP rule would be replaced by "Increasing Pay Equity Data Reporting in EEO-1 Form" issued in accordance with the Presidential Memorandum—Advancing Pay Equality Through Compensation Data Collection . However, the rule has not yet been formally rescinded. If the EEO-1 Form is not rescinded, it will be easy for OFCCP to move forward with this burdensome report that is unnecessary considering data does not support the need for the collection of such data and compensation is already regulated in construction by the Davis-Bacon Act. Additionally, proprietary company information and employee privacy may be compromised.	AGC recommends that the agency formally rescind this rule.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story

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DOL/ETA	Equal Employment Opportunity in Apprenticeship Training Programs	Proposed Rule	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 recommends that simplifying the steps that program sponsors must undertake to ensure equal opportunity; eliminate the 7% utilization goal; eliminate a requirement for applicants to self-identify as an individual with a disability both pre- and post-acceptance; consider "good-faith efforts" for compliance instead of goals that act as quotas; reduce sponsors' record-keeping burdens and costs of compliance; and clarify/ provide additional guidance on the methods used to select apprentices for program participation.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story
ENVIRONMENT						
USACE	2017 Nationwide Permits Package	Proposal to Reissue and Modify Nationwide Permits	6/1/16	Obtaining these federal "general" 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.	AGC recommends that the new administration not interfere with this permit from going final. Important that reissuance of 2017 NWP package does not get held up in "re-eval" by new Administration. If the President-elect Trump administration issues a "Midnight Regs" memo it should provide exemption for NWPs that will likely be out of OMB review by not in effect by 1/20/17. Delay will cause lapse in available general permit coverage for new construction.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story

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FWS	Endangered and Threatened Wildlife and Plants; Revisions to the Regulations for Petitions	Proposed Rule	5/21/15 1st proposal; 4/21/16 Revised proposal based on comments received	AGC supports 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. This FWS proposal would revise 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 would reduce the number of petitioned species in coming years.	AGC recommends that this proposed rule be allowed to go final.	<ul style="list-style-type: none"> • AGC News Story • US Chamber Comment Letter
EPA/OAR	Near-Road Nitrogen Dioxide Monitoring Requirements	Proposed Rule	5/16/2016	This proposed rule repeals roadside monitoring requirements of a previous rule - EPA would remove the existing requirements for near-road NO2 monitoring stations in less populated areas.	AGC recommends that this rule go final.	<ul style="list-style-type: none"> • AGC Comments
USACE	"Assumable Waters" Determination	Report due out in early 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"> • EPA Information

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EPA/OW	Post Construction Stormwater Rule	Info. Collection Request	5/1/2010	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 and techniques to control any erosion or sedimentation that may result from stormwater runoff.	<ul style="list-style-type: none"> • AGC News Story
EPA/OPPTS	LRRP Program Expansion to Public & Commercial Bldgs	Advanced Notice of Proposed Rulemaking	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 testified 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 recommends 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"> • AGC Coalition Comments • AGC News Story • AGC Testimony Presentation

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EPA/OCFO	Administrative Wage Garnishment	Proposed Rule	7/02/14	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 recommends that this rule not go final.	<ul style="list-style-type: none"> • AGC News Story
EPA/USGS	Draft Technical Report: Protecting Aquatic Life from Effects of Hydrologic Alteration	Guidance	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"> • AGC News Story
FWS	ESA Compensatory Mitigation Policy	Draft Policy	9/2/16	FWS proposed a new compensatory mitigation policy that aims to implement the recent policies issued by the Executive Office and the Department of the Interior that shift from a project-by-project approach to a landscape-scale approach to planning and implementing compensatory mitigation. It sets standards and minimum criteria for mitigation providers and permittees. The Service acknowledges it lacks statutory authority to require mitigation. Also, if FWS staff applies the final policy to actions currently under review, it may cause delay and interruptions.	AGC recommends that the Trump administration revisit this draft policy. 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.	<ul style="list-style-type: none"> • AGC News Story

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FEMA	Floodplain Management and Protection of Wetlands Regs.	Proposed Rule	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.	Midnight Rule - still a proposed rule; AGC recommends the President-elect Trump administration should revisit and rescind.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story
EPA/OAR	Tailoring Rule	Proposed Rule	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"> • AGC News Story
TAX						
IRS	Estate, Gift, and Generation-Skipping Transfer Taxes; Restrictions on Liquidation of an Interest	Proposed Rule	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 recommends that this rule be withdrawn. If finalized, it should be rescinded.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story • AGC Letter from 730+ Companies

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TRANSPORTATION

DOT	Geographic-Based Hiring Preferences in Administering Federal Awards	Proposed Rule and Pilot Program	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 United Building & Construction Trades v. Camden which held that in-state hiring preferences discriminate against non-residents, violating the Privileges and Immunities Clause of the Constitution. Contractors could be forced to hire unneeded workers or unskilled workers and potentially layoff current employees. In addition, this creates safety concerns for new hires and current employees and increases project costs. DOT established a pilot program to allow states to use local hire mandates and has issued a proposed rule to make this change permanent.	Discontinue the pilot program and ensure that the rulemaking does not move forward, as it is patently illegal and a blatant example of executive overreach.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story
DOT/ FHWA	Buy America Nationwide Waiver Notification for COTS Products With Steel or Iron Components and for Steel Tie Wire Permanently Incorporated in Precast Concrete Products	Notice of Proposed Rulemaking	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.	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.	<ul style="list-style-type: none"> • AGC Comments • AGC Comments on Previous Buy America Waiver Notice • AGC News Story • AGC News Story on Court Action Rejecting FHWA Guidance • Previous FHWA Buy America Waiver Notice • AGC Request for FHWA to Clarify Buy America Requirements

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FMCSA	Minimum Training Regs for Entry-Level Commercial Vehicle Operators	Proposed Rule	3/7/16	The construction industry is faced with a significant shortage of qualified workers, including truck drivers with commercial driver's licenses (CDLs), to meet its work force needs. That shortage is projected to increase in the immediate future.	Drop the 30 hour behind the wheel training requirement. Instead, drivers should be judged based on their ability to meet specific performance criteria, not on an arbitrary number of hours spent in a training program.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story
DOT/ FHWA	National Performance Management Measures	Notice	4/22/16	Requires state DOTs to establish performance measures for climate-related (greenhouse gas) emissions. The proposal 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.	DOT issues final rule as directed by Congress that does not include greenhouse gas emission performance requirements. If this rule were to become final, contractors could be required to retrofit or replace currently owned construction equipment, extremely expensive scenarios, and long-awaited transportation projects could be significantly delayed.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story • Letter against proposed rule from House T&I Committee
DOT/ FAA	Operations of Small Unmanned Aircraft Systems Over People	Pre-Rule Stage	N/A	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.	

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DOT/ FAA	Use of Micro Unmanned Aircraft Systems	Pre-Rule Stage	N/A	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.	
FEDERAL CONTRACTING						
SBA	Credit for Lower Tier Small Business Subcontracting	Proposed Rule	10/6/15	Current rules require goals for small business subcontractors, but prohibit prime contractors from truly accounting for the total amount of dollars flowing to small businesses. As it stands, if a business deemed large by SBA standards is included as a first tier subcontractor, a prime contractor unable to report any subcontracting dollars going to small businesses at lower tiers. This does not provide a complete picture of true small business participation on a project or in the construction industry. The SBA's proposed rule would help bring greater transparency and accuracy to small business subcontracting goal.	AGC recommends that this rulemaking be completed. Additionally, any final rule should not include requirements for prime contractor oversight of or liability for subcontractors' efforts to attract small business subcontractors or comply with the rule.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story • AGC Testimony
SBA	Task and Delivery Order Contracts, Bundling, Consolidation	Notice of Proposed Rulemaking	5/16/12	SBA's proposal addresses multiple award contracts (MAC), bundling and consolidation. If finalized, the proposed rule would further streamline SBA regulations on the books regarding MACs and small business set-asides.	AGC recommends that the regulation move forwards with the changes put forth in AGC's comments.	<ul style="list-style-type: none"> • AGC Comments • AGC News Story • AGC Testimony

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FAR	FAR Case 2016-005; Effective Dialogue between Government and Industry	Proposed Rule	11/29/16	The proposed rule clarifies that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry. This proposal will help reestablish the necessary communication between federal employees that procure construction services but do not necessarily have the requisite experience or professional understanding of construction that industry has.	AGC strongly supports this rulemaking and encourages the Trump administration to build upon the proposed rule and allow it to go final.	
FAR	FAR Case 2013-018; Clarification of Requirement for Justifications for 8(a) Sole Source Contracts	Proposed Rule Bolsters Original Rule Reporting 3/16/11 AGC News Story	11/15/16	There are many qualified construction companies that can provide services at a competitive rate to the government when those contracts are bid in a competitive manner. Sole source contracts do not benefit the government or the construction contracting community at large. This proposal will help ensure that contracting officers write justifications for when they sole-source certain contracts.	AGC supports this rulemaking and recommends that more efforts to limit or make more transparent sole source contract awards be undertaken by the new administration.	<ul style="list-style-type: none"> • GAO Report • AGC is currently drafting its comments.