

NAHB Regulatory Update

November 6, 2018

Election Impacts on the Regulatory Process

- For most issues, Congress does not get very involved in the rulemaking process. There are always particular topics that Members of Congress may be interested in or for which there may be “companion” legislation, so they may take an interest and hold a hearing or send a letter, but such action is not generally widespread.
- If the House changes hands, however, many have already made it clear that they will hold a number of oversight hearings regarding Trump’s deregulatory agenda (among other things).
- This will definitely slow things down and may result in changes to policies/programs, but not likely ones that directly impact NAHB members.
- Further, depending on the results (and particularly if the D’s take the House AND Senate), the Administration may determine that legislation is unlikely to pass, so could focus on the regulatory process as the only way to get things done, which could result in more regulatory activity.
- So, like Government Affairs, we are closely watching the election results.
- Another thing we are watching is the reaction of the government employees and appointees to the results. The President has already hinted about changes to the Cabinet and several others are expected to leave the White House, but the Agencies will be equally vulnerable. This could be even more pronounced if there is an increase in oversight activities (no government employee likes to testify before Congress).
- There also continue to be challenges in agency leadership, as President Trump has only filled 54% of the roughly 700 key executive branch nominations (Cabinet secretaries, deputy and assistant secretaries, chief financial officers, general counsel, heads of agencies, ambassadors and other critical leadership positions). Examples:
 - Andrew Wheeler – Acting Administrator EPA.
 - Vacant – Deputy Administrator, Federal Emergency Management Agency.
 - Daniel Simmons nominated, awaiting full Senate action – DOE Assistant Secretary for Energy Efficiency and Renewable Energy.
 - Scott A. Mugno nominated, awaiting full Senate action – Assistant Secretary for Occupational Safety and Health.
- Although not really a change from the status quo, this lack of leadership could continue to make progress difficult at some agencies, as most career staff are unwilling or unable to fill in and there is also talk of increasing difficulty in finding people willing to serve in those positions.

Fall 2018 Unified Agenda of Regulatory/Deregulatory Actions

- Issued Oct. 17, the Unified Agenda of Regulatory and Deregulatory Actions (Agenda) identifies the actions administrative agencies plan to issue in the near and long term. It also serves as a “report card” on how well the Trump Administration is doing in meeting the President’s directive to get rid of two regulations for every one adopted.
- Thus far, the administration claims to have gotten rid of four significant regulatory actions for each new one adopted (57 deregulatory actions and 14 regulatory ones).
- The Fall Agenda includes 3,534 rules and regulations (active, completed or long term).
- It also includes 174 “economically significant” rules (\$100 million or more in effects).
- Only 2 of the active rules that are economically significant may impact NAHB’s members – energy conservation standards for manufactured housing and energy conservation standards for residential, non-weatherized gas furnaces and mobile home gas furnaces.
- The lack of economically significant regulations affecting the industry can be viewed as both as a positive (no planned significant new requirements), and a negative (no significant deregulatory actions to provide relief), but this is not unexpected.
- Further, many of the rules that do not meet the “significance” trigger will still have impacts, including revisions to the ESA regulations, the new WOTUS definition, crane operator qualifications, changes to Table 1 of the silica rule, tracking workplace injuries and illnesses, and others.
- While the 2018 Fall Agenda provides little new news on the regulatory front, NAHB will continue its advocacy efforts as the proposed rules make their way through the process and seek workable solutions and options for its members.

Specific Issues

EPA’S OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION

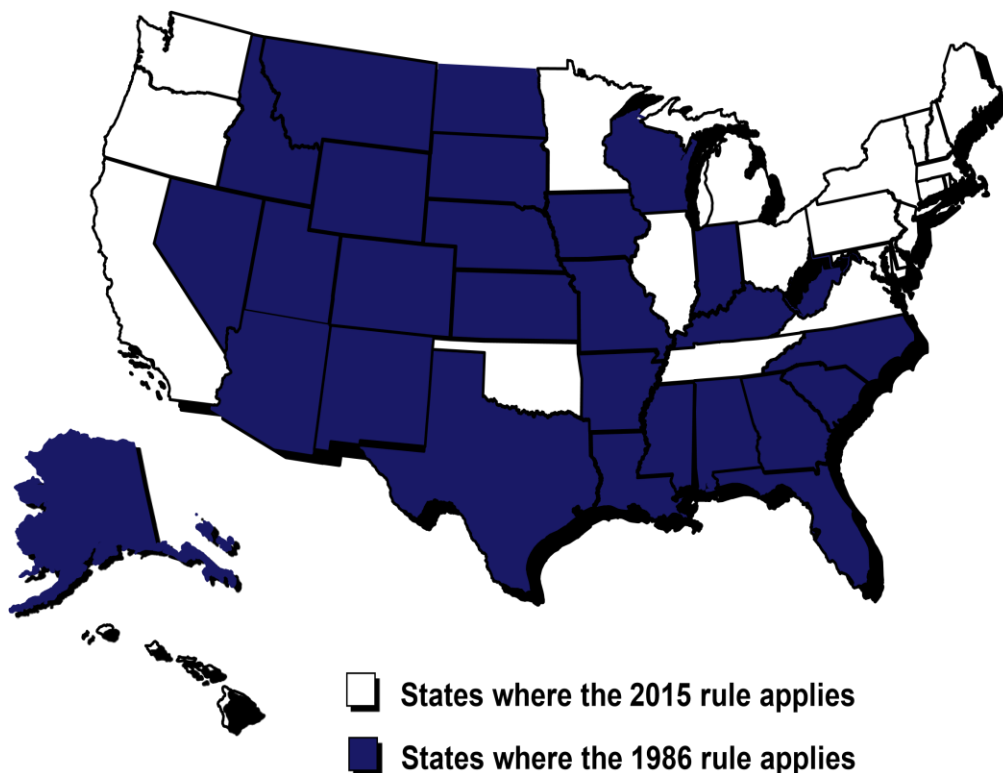
- On Tuesday morning (Nov. 6), Bill Sanderson, a developer from Cleveland, OH, represented NAHB at a meeting with EPA’s Office of Small and Disadvantaged Business Utilization (OSDBU).
- This Office serves as the Agency’s gateway and advocate for small business in several capacities, and the meeting was initiated to provide an opportunity for the Deputy and EPA senior leaders to hear directly from and engage with the small business community, and small business trade association representatives, on a variety of regulatory issues that impact small business.
- This Office has hosted regular meetings between EPA’s Deputy Administrator, EPA senior managers, small businesses and national trade associations representing small businesses since 2002.

- Bill focused his remarks on stormwater and discussed the challenges associated with overall compliance for small builders, the problematic joint and several liability language in the Construction General Permit, and the need for small businesses to have the ability to fix small problems on the site without EPA taking enforcement actions.

WATERS OF THE UNITED STATES (WOTUS)

- A proposed rule is expected to be proposed and published in the Federal Register within the next two weeks.
- NAHB will provide an overview and, eventually, sample comment letters for those members who would like to participate in the advocacy efforts on this issue.
- In the meantime, both the 2015 and 1986 rules are in effect, depending on which state you are in (see graphic).
- While this could change before the new rule is finalized, we are not holding our breath.

Which WOTUS Rule Applies?



SILICA

- The silica rule has been in place for over a year and it is being enforced.
- Recent data shows over 1000 citations, to date, with penalties of \$1.2 million.
- The areas experiencing the highest enforcement activity are NY, NJ, MI and TX.
- The trades with highest enforcement are masonry and site preparation contractors.
- Top citations from the OSHA silica rule:
 - Failing to measure silica exposure levels
 - Not following Table 1's procedures/engineering controls to reduce silica exposure
 - Not having a written exposure control plan
- To help members, NAHB has developed a sample silica exposure control plan in checklist form that highlights where jobsite silica dust exposures might occur and ways to reduce exposures, such as engineering controls for tools/equipment, work practices, respiratory protection needed, housekeeping methods, and restricting access to areas where high exposures might occur. It will be available as a download for the webinar on Thursday.
- NAHB will host a **FREE Webinar Thursday, November 8, 2:00 - 3:00**.

BUILDING CODES

- ICC is in the process of finalizing revisions to the "Group A" codes, which include egress plumbing, mechanical, fuel gas and fire safety.
- The process roughly follows three steps – Committee Action Hearings, Public Comment Hearings and cdpACCESS online voting.
- The Public Comment Hearings were held in Richmond in late October.
- There are 336 proposals included in the online vote. NAHB has identified 15 proposals of highest importance to the industry.
- Now we need your help to get our voting guides in the hands of the voters.
- As One and Done Participants, you all should have received an email yesterday with your next set of instructions.
 - Voting Guide for top 15 proposals
 - List of validated voters for your state
- We are asking that you identify at least **ONE** eligible ICC voter in your state from the list.
- Provide them the Significant Proposal list and let them know that these proposals are important to the home building industry and ask them to consider our positions when they vote.
- You can also access to full voting guide from NAHB's website at <https://www.nahb.org/en/nahb-priorities/construction-codes-and-standards/code-official-toolkit.aspx>
- That's it. You are **DONE**...until next year.