September 15, 2025

Docket Clerk, Office of Legal Policy
U.S. Department of Justice,
950 Pennsylvania Ave. NW, Washington, DC 20530
Docket No. OAG182

Subject: Department of Justice and the National Economic Council Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce (Docket No. OAG182)

Dear Sir or Madam,

The American Chemistry Council (ACC)[1] appreciates the opportunity to provide comments in response to the Department of Justice (DOJ) and the National Economic Council (NEC) request for information regarding state laws that can significantly and adversely impact the national economy or interstate economic activity and potential solutions to address such effects. ACC represents the leading companies engaged in all aspects of the business of chemistry, from manufacturing, transportation and distribution to storage and disposal. ACC and our members support science and fact-based state regulatory processes and rulemakings that protect human health and the environment, while also enabling the industry to innovate and drive solutions that can enhance water and air quality, improve energy efficiency, reduce waste and advance circularity.

The effectiveness of state regulations is often dependent on their alignment with federal standards. Concordance between state and federal regulatory frameworks helps promote consistency, legal clarity, and economic efficiency. When state rulemaking aligns with federal mandates—especially in areas like chemical management, environmental protection and waste management—regulated entities are not overly burdened by conflicting obligations. A major issue arises when states enact a patchwork of regulations that diverge from or contradict federal mandates. This fragmentation can lead to challenges for businesses operating across multiple states and it can also undermine federal regulatory goals by creating inconsistent programs, mandates and enforcement requirements.

Additionally, when businesses must navigate a maze of varying and sometimes conflicting state requirements—such as differing standards for product labeling, emissions, or permitting requirements— they may be hesitant to launch new products or expand operations if they cannot predict whether their products will be permitted or require modification in different states. This uncertainty can slow the deployment of new technologies—such as advanced recycling, new

[1] The American Chemistry Council (ACC) represents more than 190 companies engaged in the business of chemistry—an innovative, economic growth engine that is helping to solve the biggest challenges facing our country and the world. Learn more at: https://www.americanchemistry.com/about-acc.

energy systems, or new chemistries—which rely on uniform regulatory treatment for efficient development and distribution. Investors, too, may shy away from markets where legal landscapes are fragmented and volatile, preferring environments with clear, harmonized standards. This can be especially burdensome for small and mid-sized companies that lack the capacity to tailor operations for each jurisdiction, reducing their competitiveness and ability to scale nationally.

Inefficiencies and misalignment between state and federal law can also increase compliance costs, which can lead to higher costs for consumers across the country. Such policies can also impact overall manufacturing by undermining interstate commerce and reducing the availability of critical materials and supporting supply chains that are essential for domestic manufacturing. Modern healthcare, energy independence, national defense, and a resilient supply chain all depend on chemistry. ACC supports embracing a smart, sensible, science and fact-based regulatory process. In response to the DOJ and NEC request, we have highlighted below several state regulations and rulemakings that may be impacting national economic growth and placing unnecessary burden on industry and businesses.

A. Chemical and Products Regulations and Rulemaking

1. California – Proposition 65 (California's Safe Drinking Water and Toxic Enforcement Act of 1986)

   Proposition 65 is a California law that requires warning labels on products or places that may expose people to chemicals that the state has determined are linked to certain health hazards. While intended to inform consumers, it can be confusing because the warnings are based solely on hazard and do not indicate actual health risk. These labels are so common they can cause unnecessary alarm or be ignored altogether. This can make it hard for consumers to understand the science or make informed decisions about product safety. Additionally, many substances and products subject to these warning labels are already regulated by federal statutes; and in some cases assessments completed by the EPA or other federal agencies do not agree with California's assessment, resulting in requirements that do not align with federal standards.

   When Proposition 65 requirements impose requirements different from federal laws, it creates regulatory confusion and added costs for businesses that operate nationwide, as many must comply with California's standards even if federal agencies deem a product as safe or as being low risk. This can lead to inconsistent labeling, legal disputes, and increased manufacturing expenses, especially for companies trying to sell the same product across multiple states. The inconsistent standards can discourage investment and complicate interstate commerce, ultimately impacting innovation, market efficiency, and the broader national economy. The law also allows for enforcement by private individuals. These lawsuits brought by lawyers alleging businesses have failed to provide an adequate Proposition 65 warning have resulted in significant and costly litigation. As one potential solution to address the areas highlighted regarding Proposition 65, the federal government could seek to preempt some of these actions

using the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or the Federal Hazardous Substances Act (FSHA).

2. California - Safer Consumer Products (2008 Green Chemistry Law)

   California's Safer Consumer Products (SCP) law was created to encourage companies to replace certain chemicals with safer alternatives. The law gives California the authority to identify "chemicals of concern" in consumer products and requires manufacturers to analyze alternatives to these chemicals and, ultimately, take action to potentially reduce or eliminate the use of the identified chemical. Sometimes, a product might contain a chemical flagged by California, but that chemical has been assessed and found to be a low risk by federal agencies like the EPA or FDA.

   Additionally, the chemicals regulated under this state law are often already regulated by EPA under the Toxic Substances Control Act (TSCA) and by the FDA through the Food, Drug, and Cosmetics Act (FDCA). When findings made by this program impose requirements different from or stricter than federal regulations, it can create challenges for companies across the U.S. because manufacturers may choose to follow California's required standards nationwide, even if it is more expensive or the science doesn't support the requirements. This increases costs for research, reformulation, packaging, and testing. These costs are often passed on to consumers. It also creates regulatory confusion. For example, a product might meet federal safety standards but still be subject to a California specific regulation.

   An example of this misalignment is currently occurring as the California Department of Toxic Substances Control (DTSC) has proposed to add microplastics to the SCP candidate chemical list. One of the most fundamental challenges with this listing is that microplastics are not "chemicals," as that term is defined throughout federal or California law. The U.S. EPA, under the Toxic Substances Control Act, has not treated microplastics as a single chemical, but instead as a mixture. Since they are not a "chemical," they should not be listed as a candidate chemical under the SCP—thus moving forward with regulation would conflict with federal regulatory treatment of microplastics. Chemical specific regulations at the federal and state level should be assessed for regulatory consistency and certainty and implementation that supports both necessary environmental and public health protections and economic growth.

3. Maine - Toxics in Food Packaging Law

   Maine's Toxics in Food Packaging law bans the use of certain chemicals in food packaging. When Maine's law sets different standards than federal regulations promulgated by FDA or EPA, it can cause challenges for companies selling products nationwide. Businesses often need to change packaging just for Maine, or make all their products comply with Maine's rules, even if they already meet federal safety standards. This increases manufacturing and compliance costs and can lead to delays or reduced product availability. Smaller businesses may struggle to keep track of the differing

standards, and companies might even stop selling in Maine. Over time, these kinds of misaligned state-level rules can hurt the broader economy by making it harder and more expensive to do business across state lines.

4. Maine - Maine LD 1537 "An Act to Amend the Laws Relating to the Prevention of Perfluoroalkyl and Polyfluoroalkyl Substances Pollution"

   Maine LD 1537 is a law that enacts broad restrictions on the intentional use of perfluoroalkyl and polyfluoroalkyl substances (PFAS) in consumer, commercial, and industrial products. The law enacts broad restrictions that may go beyond current EPA regulations, potentially raising issues regarding federal preemption. Under this law, the definition of PFAS is broad, and there is no consideration of exposure or actual risk. Additionally, PFAS, in any amount, are assumed to be harmful. The law requires manufacturers of many types of products to seek currently unavoidable use (CUU) designations via public rulemaking to remain in commerce in Maine. In addition to causing confusion, uncertainty, and misinformation in regulations, product availability, and public perceptions in Maine, Maine's law can cause challenges for businesses nationwide. A company might follow EPA or FDA standards but still not be allowed to stay in commerce in Maine without changing product designs or formulations just for one state. Maintaining the continued ability to sell a product in Maine imposes increased compliance costs on manufacturers and distributors nationwide, which can disrupt interstate commerce and limit the availability of certain goods. These increased costs may be especially challenging for small businesses that cannot afford separate versions of their products. Increased costs can lead to price increases for consumers that could hurt the broader U.S. economy.

5. Minnesota – PFAS Regulations. Stat. § 116.943

   Minnesota's PFAS law includes a sweeping phase-out of PFAS, in consumer products (e.g., carpets, cookware, cosmetics, cleaning products, upholstered furniture), which exceeds federal regulations and mandates and, like Maine, requires an affirmative CUU designation to remain in commerce in the state. Minnesota's law also assumes all PFAS are inherently harmful, however it does not conduct an assessment of risk. The law also captures a broader swath of commercial and industrial chemicals. The banning of products and the CUU designation in Minnesota's law exceed federal regulations and mandates. This raises questions regarding regulatory overlap, compliance differences, and unsubstantiated concerns about product safety. It also causes significant regulatory and investment uncertainty for companies that manufacture or have a significant customer base in Minnesota.

   When the Minnesota state law imposes different requirements than federal rules—or steps into areas traditionally regulated at the national level—it can impede interstate commerce, and federal regulatory frameworks. Manufacturers also face increased costs, adaptation burdens, or may even decide to exit from the Minnesota market, which can ripple into job losses or reduced product availability for consumers. One possible

solution to addressing the challenges with this law is that the EPA could continue to advance a federal framework that promotes a science and fact-based approach to PFAS management. This could include common definitions, metrics, and data collection approaches.

6. New Mexico- HB212 Per- & Poly-Fluoroalkyl (PFAS) Protection Act

   New Mexico's HB 212 imposes state-level restrictions and reporting mandates on consumer products with intentionally added PFAS, creating requirements that differ from those in other states. By introducing a unique compliance framework and phased restrictions, the law risks fragmenting national supply chains and requiring manufacturers to navigate conflicting obligations, thereby burdening interstate commerce.

7. New York – Toxic Chemicals in Children's Products Law

   The New York Toxic Chemicals in Children's Products Law is designed to limit exposure of children to harmful substances. The law requires reporting of certain chemicals and prohibits the use of certain chemicals in children's products. Understanding and complying with this law can be difficult for both consumers and businesses. For example, business may struggle to keep up with the changing chemical lists, thresholds, and the differences between New York requirements and federal requirements. If federal agencies like the EPA have not prohibited the use of a chemical but New York has, manufacturers face conflicting rules depending on where they sell their products. This may make it more difficult for companies to operate across state lines.

8. New York – GreenNY — New York State's Green Procurement Program

   New York's GreenNY program is part of the state's efforts to make government operations more environmentally friendly. One part of this program focuses on limiting the use of certain chemicals. The goal is to reduce pollution, protect drinking water, and limit public exposure to certain substances. Unfortunately, this program relies on a hazard-based approach to identify chemicals and base procurement recommendations. The approach does not provide accurate information about actual human health risk, leading to misinformed and overly conservative decisions to restrict certain chemicals from products.

   Additionally, businesses may be forced to remove or reformulate products for New York even if they fully comply with EPA regulations nationwide. This makes it hard for businesses, manufacturers, and consumers. Since labeling is not always clear and products sold outside New York might not follow the same rules, people might feel overwhelmed trying to make informed choices. Ultimately, if a company sells products nationwide, it now has to create special versions of those products just to meet New York's rules. This can increase manufacturing costs and complicate supply chains.

9. New York – TITLE 10 Regulation of Chemicals In Electronic Enclosures

   This regulation aims to limit or ban the use of certain chemicals (e.g., flame retardants) in electronic enclosures (i.e., the outer casings of electronics) and requires manufacturers and sellers of electronics to ensure that the enclosures of their products do not contain these restricted substances above specified thresholds. Understanding and complying with this regulation can be difficult because it may diverge from federal standards. When federal law allows certain chemicals in specific concentrations, and this New York regulation bans them, manufacturers are caught between inconsistent legal requirements. This lack of regulatory uniformity makes it difficult to design and manufacture products that are compliant across all markets. Most importantly, when individual states like New York impose different product specific regulations than federal standards, it erodes the economic unity of the national market. This can create trade barriers within the U.S. and hamper economies of scale. Working to harmonize state and federal regulations, or offering clearer guidance and support for affected businesses, could help mitigate these impacts.

10. Washington State – Washington State Department of Ecology's Safer Products Program

    Washington State's Safer Products Program is designed to reduce public and environmental exposure to potentially hazardous chemicals by identifying priority chemicals and priority consumer products that contain them. While the program aims to protect health and the environment, it can be confusing and burdensome for consumers and businesses. For businesses—especially small and mid-sized manufacturers—the challenge lies in understanding compliance obligations, adapting product formulations, navigating supply chain transparency, and aligning with broader market requirements. These complexities are compounded when companies sell products in multiple states with differing rules.

    Additionally, the program's lack of transparency and alignment with federal standards can result in duplicative efforts and economic burdens. Notably, when state laws like Washington's diverge from federal statutes, such as TSCA, FIFRA, and FDCA, it can negatively impact compliance, safety and economic development. Companies operating nationwide are forced to navigate inconsistent standards, which increases compliance costs, creates legal uncertainty, and complicates product distribution. Additionally, if certain chemicals are banned or restricted in Washington State but permitted under federal law, manufacturers may be forced to reformulate or limit product availability in Washington, thus undermining the uniformity that federal regulation is intended to achieve. This divergence can disrupt interstate commerce, fragment markets, and place U.S. manufacturers at a disadvantage globally, weakening economic efficiency and supply chain resilience.

B. Climate Regulations and Rulemaking

1. California - SB 253 – Climate Corporate Data Accountability Act; SB 261 – Climate-Related Financial Risk Act

   California's SB 253 "Climate Corporate Data Accountability Act" requires U.S. companies that meet a certain revenue threshold and are doing business in California to publicly report their Scopes 1, 2, and 3 greenhouse gas emissions, subject to independent third-party verification requirements. California's SB 261 "Climate-Related Financial Risk Act" requires U.S. companies that meet a certain revenue threshold and are doing business in California to biennially disclose climate-related financial risks and mitigation measures. These laws directly impact interstate commerce by covering a significant number of companies based outside California and attempting to compel speech regarding conduct occurring entirely outside the state's borders. Merely by entering the California market, covered entities are required to disclose information—irrespective of whether these disclosures are tied to any commercial purpose or transaction.

   The burden of these laws will be felt across the supply chain as covered entities are required to collect Scope 3 emissions data from upstream and downstream partners, disproportionately affecting small and mid-sized businesses—many of whom are not subject to the laws themselves and may lack the resources to collect such emissions data. The Securities and Exchange Commission (SEC) has abandoned defense of its own climate disclosure rule from the previous administration which sought to impose similar requirements to the California laws, and further acknowledged the potential harm mandatory climate disclosure rules can cause, describing the final SEC climate rule as "deeply flawed" with the potential to "inflict significant harm on the capital markets and our economy." Moreover, these California laws are preempted by federal law. Particularly, under the Clean Air Act, the Environmental Protection Agency (EPA) has primary authority to implement programs to regulate pollution, including greenhouse gases. Notably, a legal challenge is already underway by major business groups, arguing the laws violate the First Amendment, the Supremacy Clause, and impose unconstitutional burdens on interstate commerce.

2. New York – Climate Change Superfund Act

   The New York Climate Change Superfund Act requires certain business to pay for climate-related clean-ups associated with facility emissions. The law targets companies based on their historical contribution to global greenhouse gas emissions within New York. Since the act targets companies for global emissions, not just those within New York's borders, it raises legal questions about jurisdiction and fairness. This creates uncertainty about long-term financial obligations, future investments in local infrastructure and energy projects, and federal preemption of state laws in regulating air emissions. Notably, the U.S. Department of Justice filed a motion for summary judgment

in federal court aiming to have New York's law declared unconstitutional and permanently barred from enforcement, noting regulatory overreach.

3. New York – 6 NYCRR Part 253 – Mandatory Greenhouse Gas Reporting (Proposed)

   New York's 6 NYCRR Part 253 – Mandatory Greenhouse Gas Reporting law is currently proposed, but not yet finalized. It seeks to establish a comprehensive emissions reporting program requiring entities that emit emissions over a set threshold to report detailed annual emissions data. This proposal may present significant challenges as businesses may struggle to comply due to the complexity of the reporting thresholds, the inclusion of indirect emissions, and the need for specialized verification processes. These requirements add administrative burdens and uncertainty, especially for companies operating in multiple states, where reporting under other federal agency rules may differ in scope or methodology. Additionally, as states like New York consider the adoption of climate disclosure rules that are misaligned with federal requirements this results in a regulatory patchwork that can increase costs, deter investment, and create duplicative efforts that lack harmonization.

4. Vermont – Climate Change Superfund Act

   The Vermont Climate Change Superfund Act, similar to the New York Climate Change Superfund Act, requires certain businesses to pay for climate-related clean-ups associated with facility emissions. The law targets companies based on their historical contribution to global greenhouse gas emissions within Vermont. Businesses may find it difficult to understand the requirements and make informed decisions under this law. For example, the attribution science used to link individual companies to specific climate implications is complex and still evolving. This creates uncertainty around how liability is calculated and whether it will stand up to legal challenges. Additionally, the law applies retroactively, holding businesses responsible for past emissions even if those emissions were within the legal requirements mandated at the time. Notably, the Department of Justice is currently in litigation with Vermont to challenge its Climate Change Superfund Act, arguing it is unconstitutional and conflicts with federal authority. Like the New York law, this law raises significant questions about impact on the national economy and legal system. If states like Vermont impose liability standards that differ from or conflict with federal statutes, particularly those related to environmental regulation, energy policy, or commerce, it can complicate compliance and impact businesses. This can impact the cost of energy and slow economic growth.

5. New York – 6 NYCRR Part 494 – Hydrofluorocarbon Standards and Reporting

   New York's 6 NYCRR Part 494 establishes restrictions on the use of high global warming potential (GWP) hydrofluorocarbons (HFCs) in specific end-uses. The rule prohibits the sale, installation, and use of products containing high-global warming potential HFCs in refrigeration, air conditioning, foam, and aerosol applications, based on defined sector-specific timelines. While NYSDEC asserts that the rule restricts only virgin refrigerants,

the regulation lacks clear language on reclaimed gases, creating compliance uncertainty. State-specific mandates, that are not aligned with federal AIM Act standards, can contribute to a fragmented regulatory landscape that can increase costs, complicate compliance, and raises legal and operational risks for businesses operating across multiple jurisdictions.

C. Water Regulations and Rulemaking

1. Colorado – Colorado Department of Public Health and Environment (CDPHE) Final General Permit for Industrial Stormwater Discharges, "Industrial Stormwater General Permit for Non-Extractive Industries

   This permit mandates that qualifying industrial facilities implement a stormwater management plan, conduct regular inspections, monitor identified chemicals (including requirements for per- and polyfluoroalkyl substances or PFAS) in their discharges, and evaluate the effectiveness of their control measures. Facilities must also adhere to best management practices to prevent pollutants from stormwater runoff. However, compliance with the permit can be challenging for businesses due to the complexity of tracking and managing stormwater discharges. While the permit aligns with federal Clean Water Act standards, businesses operating in multiple states may face challenges due to variations in state-level regulations.

   Differences in permit requirements, reporting obligations, and enforcement mechanisms can create complicated compliance for national companies. This regulatory fragmentation can lead to increased operational costs and administrative overhead, potentially impacting the national economy by discouraging investment and innovation in affected industries. Notably, the City and County of Denver have initiated legal action against the CDPHE concerning the permit, challenging the inclusion of new conditions related to the regulation of PFAS. The litigants argue that these new requirements were improperly added to the existing permit renewal process, and would impose significant, unfeasible costs and operational challenges on the city.

D. Air Regulations and Rulemaking

1. Colorado – Colorado Air Quality Control Commission (AQCC) Proposed Revisions to Regulation 30 (Proposed)

   Colorado's proposed revisions to AQCC Regulation 30 seeks to establish health-based standards for five designated priority air toxics (i.e., formaldehyde, benzene, hexavalent chromium, ethylene oxide, and hydrogen sulfide). There have already been significant concerns raised from industry groups noting that Colorado's proposed health-based air toxics standards under Regulation 30 lack a strong scientific and technical foundation, particularly regarding the feasibility of meeting the proposed thresholds. Stakeholders have also argued that the state identified the five toxic air contaminants before fully

evaluating whether the standards are achievable or supported by sufficient risk and economic analysis.

While Colorado's intention is to protect public health, the new standards may diverge from or exceed existing federal hazardous air pollutant regulations under the Clean Air Act. If Colorado's standards become more stringent or differently structured than federal standards, businesses operating across state lines could face fragmented compliance regimes, increased monitoring costs, and heightened permitting complexity. This divergence creates operational inefficiencies, slow decision-making, and increases costs, all factors that could influence competitiveness and investment decisions in broader supply chains and national markets.

2. Minnesota – Minnesota Pollution Control Agency (MPCA) "Planned New Rules Governing Cumulative Impacts Analysis for Permit Decisions in Environmental Justice Areas" (Proposed)

   This proposed rule would add requirements for certain air permits—such as new construction, facility expansions, or renewal of existing permits in "environmental justice" areas in the state. While designed to advance environmental justice, these new requirements may create a divergence from standard federal permit processes under the Clean Air Act, potentially resulting in inconsistencies in the regulation and compliance requirements, including overlapping permitting regimes and having to perform additional cumulative impact analyses and community engagement steps in Minnesota that are not required elsewhere. This fragmentation can slow down approvals, raise operational costs, and influence investment decisions, thereby dampening economic competitiveness on a national scale. Some solutions, in lieu of this proposed rule, include working to establish a transparent and predictable regulatory process; increasing industry engagement; and incorporation of the best available and most relevant science related to cumulative impact analysis.

3. Minnesota – MPCA Proposed "Amendments to Rules Governing Air Quality, Minnesota Rules, chapters 7002, 7005, 7007, and 7019; Proposed Repeal to Rules Governing Air Quality, Minnesota Rules, chapter 7007.1850" (Proposed)

   This proposed rule seeks to introduce several new requirements for state air emissions reporting in certain counties, including annual reporting of air toxics emissions for criteria air pollutants (including particulate matter, ammonia, volatile organic compounds, lead, nitrogen dioxide, carbon monoxide, and sulfur dioxide). The proposed rule also includes provisions to remove sections of the state's emergency affirmative defense provisions pursuant to recent Clean Air Act case law. Some provisions within the proposed amendments, especially those related to permit modifications, appear to diverge from federal Clean Air Act requirements and thus potentially expand the state's authority beyond what federal regulations allow. This mismatch could result in state-level permit conditions or timelines that conflict with federal mandates. This may place disproportionate compliance burdens on regulated entities, require potentially

redundant reporting, create inconsistencies with federal air regulations and lead to increased economic burden.

4. Ohio – Air Nuisance Rule (ANR) in State implementation plan (SIP)

The Ohio's Air Nuisance Rule (ANR), as included in its State Implementation Plan (SIP), prohibits the emission of air contaminants that cause annoyance or discomfort to the public or damage to property, regardless of whether they exceed specific pollutant thresholds. The ANR offers a sweeping definition of what can be considered a "nuisance" for the purposes for state regulation and covers almost any substance emitted by any source that meets an endangerment characterization made by the state. These overly broad state-level criteria lack consistency with other similar federal-level requirements, like EPA's air quality standards set under the Clean Air Act. The EPA emphasizes objective, quantifiable emissions limits to ensure consistency, enforceability, and alignment with National Ambient Air Quality Standards (NAAQS). The misalignment of the ANR with EPA standards could impact the national economy and manufacturing by creating overly restrictive requirements, regulatory uncertainty, and inconsistency across state and federal levels. If states rely on vague or subjective rules like the ANR instead of measurable, federally approved standards, manufacturers may face unpredictable enforcement actions, legal challenges, or delays in permitting. This can discourage investment, increase compliance costs, and complicate interstate operations for companies operating in multiple states. In the long term, such regulatory fragmentation can weaken the efficiency of the national regulatory framework, hinder economic growth, and reduce the global competitiveness of U.S. manufacturing.

E. Plastics Regulations and Rulemaking

1. Recycling Technology Restrictions

Dated state laws can hinder the adoption of modern recycling technologies by misclassifying them. For example, California has a law that leads some to interpret pyrolysis[2] as waste management instead of manufacturing or recycling. This ambiguity creates uncertainty for investors, potentially slowing the development and implementation of this technology. The U.S. EPA has already taken steps, in July 2025, to clarify the classification of pyrolysis by withdrawing 18 significant new use rules (SNURs) established by the previous Administration. One potential solution to address these state actions is that EPA could formally clarify that pyrolysis and gasification when used for advanced recycling are manufacturing processes, not solid waste incineration. This would help establish that pyrolysis used in recycling would be considered recycling and not waste management. Increased legal certainty could help increase investment and accelerate deployment of this technology.

[2] Pyrolysis is one of the chemical processes used in advanced recycling, which converts hard-to-recycle plastics into new products.

2. Labeling

The emergence of state-specific labeling requirements, such as those recently enacted in California, creates a fractured system that could increase costs. For example, a product that meets labeling requirements in one state might be out of compliance in another. This patchwork of regulations forces companies to consider a costly and complex restructuring of the entire U.S. product distribution system. One potential solution to address this is that Congress could enact federal legislation that could standardize key labeling elements, including resin codes, consumer education, and recyclability claims. Such a federal framework would not only prevent costly and disruptive changes to the distribution system but also decrease compliance costs for businesses while providing consumers with clear, consistent, and credible information. Additionally, utilizing and leveraging existing frameworks like the FTC Green Guides could help to address the patchwork of state laws that may conflict, and it avoids state-specific conflicting legal interpretations in the courts that would implicitly set state-by-state standards for companies to navigate for packaging labelling.

3. Resin Restrictions

State-level restrictions on packaging, such as a New York proposal to ban polystyrene and vinyl resins, creates a fragmented regulatory landscape. These proposals often also prohibit specific chemistries used in resin manufacturing. Since resins and chemistries must already comply with numerous federal health and safety standards—especially for human-contact packaging—these state-based restrictions are redundant. Materials are selected for their performance and cost-effectiveness. Restricting certain resins and chemistries can reduce product performance, increase the risk of product damage, and raise overall costs. One potential solution to address these state actions is that Congress could enact legislation clarifying that any packaging that already meets existing federal requirements is exempt from additional state-level restrictions.

4. Extended Producer Responsibility (EPR) Harmonization

ACC supports extended producer responsibility (EPR) as a mechanism to help modernize the nation's outdated recycling infrastructure. While we are encouraged that some states are enacting EPR laws, inconsistency among these laws is creating a fragmented and costly regulatory landscape. For example, the seven states currently implementing EPR laws (CA, CO, OR, ME, WA, MD, MN) are adopting widely different recycling definitions, metrics, and compliance requirements. These standards may actually deter companies from using widely-recycled materials, such as California's adoption of a standard that would classify reattachable lids to rigid bottles as non-recyclable, despite actual recycling facility practices to recycle these materials. Different states may also categorize the same materials differently, with respect to recyclability; and other states may incentivize the use of one material, while another may deem it non-recyclable. This patchwork of regulations may impact the use of packaging materials and compliance with federal laws intended to protect consumers. One potential solution

to address these varying state programs is that the EPA could establish a federal framework that promotes a common approach to EPR and recycling. Setting common definitions, metrics, and data collection standards, could support compliance and stimulate the domestic economy.

5. California – AB 1201 (2021-2022)

   In October of 2021, CA AB 1201 was signed into law, with an effective date of January 1, 2026. This law will impose labeling requirements on compostable packaging that are both burdensome and appear to ignore the progress made to develop certified compostable products. Unfortunately, a key provision of this law will lead to a de facto ban on the sale of certified compostable products in California. This provision says that by January 1, 2026, no company can place appropriately labeled certified compostable products on the market in California unless they are an accepted input for organic compost under the National Organic Program (NOP) managed by USDA.

   In September 2023, a national trade association representing producers of certified compostable products and consumer brands submitted a petition to USDA asking for it to update a decades old definition of compost which prohibits certified compostable products from being processed by composters producing certified organic compost[3]. If USDA were to address this petition it would provide a potential solution to the challenges encountered by this California law.

ACC appreciates the opportunity to provide input into this request for information. Feel free to contact Kimberly Wise White (email: Kimberly_White@americanchemistry.com) with questions or to discuss ACC's comments in more detail.

Sincerely,

Kimberly Wise White, Ph.D
Vice President, Regulatory and Scientific Affairs
American Chemistry Council

[3] BPI - BPI Petitions USDA to Adopt Climate Smart Agriculture Practices