U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF ADVOCACY
REGULATION • RESEARCH • OUTREACH

October 30, 2025

VIA ELECTRONIC SUBMISSION

The Honorable Nicholas J. Schilling, Jr.
Supervisory Official
Office of Legal Policy
U.S Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20580

Re: Comments on the Department of Justice's (DOJ) Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce [Docket No. OLP182].

Dear Mr. Schilling:

On August 15, 2025, the U.S. Department of Justice (DOJ) published a Request for Information (RFI) in the *Federal Register* seeking comments on state laws that unduly burden interstate commerce, raise costs, or harm markets.[1] The Office of Advocacy appreciates the opportunity to comment on behalf of small entities and supports DOJ's review of state-level practices that drive up nationwide costs and "undermine Federalism by projecting the regulatory preferences of a few States into all States."[2] Advocacy views this initiative as a valuable step in examining whether the state laws and regulations identified may be preempted by existing federal authority and respectfully submits the following comments. This letter addresses a range of state laws and practices that impose significant burdens on small businesses.

When states enact laws and regulations that are stricter than those of other states, especially when these rules target out-of-state businesses or impose significant compliance burdens, they can unduly burden interstate commerce, distort markets, and increase costs for small businesses. Such state measures may include product standards, environmental policies, or production requirements that differ from the rest of the country, forcing companies active in multiple states to comply with a complex patchwork of regulations. This often leads to higher compliance costs, which are especially difficult for small businesses to absorb, and can result in higher prices for consumers nationwide.

When these regulations are not justified by compelling local interests, courts have recognized that they may violate the Dormant Commerce Clause, which prohibits states from discriminating

[1] 90 Fed. Reg. 39427 (Aug. 15, 2025).
[2] Exec. Order No. 14,260, Protecting American Energy from State Overreach, 90 Fed. Reg. 15513 (A

against or unduly burdening interstate commerce.[3] The DOJ should consult with relevant federal agencies and Congress on conditional funding approaches that would allow states to maintain ultimate control over their regulatory frameworks while encouraging the adoption of uniform standards that reduce compliance burdens for small businesses.

The state policies cited in this letter are organized by labor, alcohol and tobacco, environmental, transportation, shellfish, energy, and the California Disabled Persons Act. Among the highlights are the "climate superfund" laws enacted by New York and Vermont. They impose retroactive liability on energy companies for historical climate damages based on global emissions, with likely pass-through cost increases hitting small businesses and consumers.

Another is Washington's energy code and related natural gas restrictions that effectively constrain federally covered appliances through a performance credit system and de facto limits on natural gas, with cited per-home cost adders and builder burdens highlighting the need for housing affordability and deregulatory initiatives.

Thirdly, Oregon's Extended Producer Responsibility (EPR) packaging program sweeps in wholesalers and distributors as "producers," delegates broad power to a single private Producer Responsibility Organization (PRO) with confidential fee methods, and has reportedly doubled fees, creating concerns about opaque quasi-taxation and regulatory privatization. The interstate trade barriers, small business margin squeeze affecting farmers and ranchers selling into Oregon, and antitrust concerns including a single PRO with high application fees offer multiple avenues for federal intervention.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA). As such, the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),[4] as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),[5] gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.[6] If a rule will not have a significant economic impact on a substantial number of small entities, agencies may certify it as such and submit a statement of factual basis that adequately supports its certification.[7]

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.[8] The agency must include a response to these written

[3] Pike v. Bruce Church, Inc., 397 U.S. 137 (1970).
[4] Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).
[5] Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).
[6] 5 U.S.C. § 603.
[7] *Id.* § 605(b).
[8] Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

comments in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, unless the agency certifies that the public interest is not served by doing so.[9]

Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."[10]

B. The DOJ's Request for Information

In recent years, small entities have faced increasing challenges from the cumulative effects of federal regulations and administrative requirements. In response, there has been a governmentwide effort to identify and reduce unnecessary regulatory burdens to promote economic growth. Federal regulatory burdens are only part of the story.[11] State-level practices can drive up nationwide costs and undermine American safety and federalism by projecting the regulatory preferences of a few states into all states. According to the National Small Business Association, half of businesses believe federal regulation is the most burdensome source of regulation, but, importantly, over a quarter believe that state regulations are the most burdensome.[12] In furtherance of these objectives, the DOJ's RFI invites public input on ways to reduce state-level burdens and costs.

II. Advocacy's Outreach and Summary of Small Entity Issues

Advocacy held a small business roundtable on September 9, 2025, to seek feedback on state laws and regulations that unduly burden interstate commerce, raise costs, or harm markets. The roundtable brought together 127 small businesses, their representatives, and other interested parties to share their perspectives and experience. The sections that follow present responses received from that dialogue.

C. Interstate Sales Tax

Issue: The state laws passed in response to the Supreme Court's 2018 decision in *South Dakota v. Wayfair* have created significant burdens for small businesses engaged in interstate commerce by requiring them to navigate and comply with thousands of state and local tax jurisdictions across the country.[13] The decision granted states the authority to collect sales tax from out-of-state businesses, even if they had no physical presence in the state. Additionally, states such as Ohio, Oregon, and Washington are implementing commercial activity or business and occupation taxes that further burden businesses.

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[9] *Id.*
[10] Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).
[11] U.S. Small Bus. Admin, Off. of Advocacy, Comments on the Department of Justice's (DOJ) Request for Information to Anticompetitive Regulations Task Force; Targeting Red Tape that Hinders Free Market Competition (June 20, 2025) https://advocacy.sba.gov/wp-content/uploads/2025/06/Comment-Letter-DOJ-RFI-on-Anticomp-Regs-Task-Force.pdf.
[12] NAT'L SMALL BUS. ASS'N, NSBA SMALL BUSINESS REGULATIONS SURVEY (July 2025), https://www.nsbaadvocate.org/_files/ugd/fec11a_d132369606b34957a0262d7d8eca561b.pdf.
[13] South Dakota v. Wayfair, Inc., 585 U.S. 162 (2018).

Small Business Impacts: A small business based in Arizona stated that the ruling subjected its 21-employee company to the same sales tax compliance demands as major retailers like Walmart. Small businesses must now comply with tax regulations across over 12,000 different taxing jurisdictions based on nine-digit zip codes. One small business reported spending $516,000 to collect $191,000 in sales tax, with these costs built into their products and passed on to customers. The stakeholder also noted that states are increasingly ignoring the Interstate Income Act of 1959, which was designed to prevent states from taxing businesses engaged solely in solicitation of sales, resulting in his company paying income tax to Hawaii, franchise tax to California, and business and occupation tax to Washington state.[14] Unlike large retailers with extensive compliance departments and software systems, small businesses often lack the resources to manage the complexity and cost of multi-state tax collection, filing, and auditing. This patchwork of requirements not only increases compliance costs but also acts as a barrier to interstate sales, discouraging small firms from expanding beyond their home state.

D. Artificial Intelligence

Issue: State regulation of artificial intelligence (AI) has created a rapidly evolving patchwork of requirements that burden interstate commerce and small business innovation. In 2024, states passed 238 technology-related laws, compared to just one at the federal level.[15] Federal lawmakers did not enact any new laws specifically governing artificial intelligence, while states introduced more than 100 AI laws.[16] All 50 states, along with Puerto Rico, the U.S. Virgin Islands, and the District of Columbia, brought forward over 1,000 AI-related bills throughout the year.[17]

The use of AI is already central to manufacturing, with over half of manufacturers in the National Association of Manufacturers experimenting with AI today and 80% saying it will be central by 2030.[18] State-specific requirements create complex compliance for businesses operating across state lines, as AI systems and digital platforms often serve customers nationwide regardless of where the business is physically located.

A fragmented regulatory approach leaves companies with little choice but to comply with the most restrictive state requirements across all their operations, effectively allowing individual states to set national AI policy. This regulatory uncertainty undermines the uniform national market that is essential for innovation and competition, particularly in emerging technologies where compliance costs can determine market entry and competitive viability.

Small Business Impacts: Small businesses face disproportionate compliance burdens from state AI regulations due to their limited resources for legal analysis and technical implementation. For example, California's bot disclosure law requires businesses to identify when automated systems interact with users online, with the Attorney General having authority to levy fines of up to

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[14] Pub. L. No. 86-272, 73 Stat. 555 (1959).
[15] Scott Babwah Brennen et. al., CTR. FOR SOC. MEDIA & POL., *The State of State Technology Policy: 2024 Report* (Dec. 12, 2024), https://csmapnyu.org/impact/policy/the-state-of-state-technology-policy-2024-report.
[16] *See* Nat'l Conf. of State Legislators, *Artificial Intelligence 2025 Legislation*, https://www.ncsl.org/technology-and-communication/artificial-intelligence-2025-legislation (last updated July 10, 20205).
[17] See Multistate, *Artificial Intelligence Legislation,* https://www.multistate.ai/artificial-intelligence-ai-legislation (last visited Oct. 22, 2025).
[18] MFG. LEADERSHIP COUNCIL, SURVEY REPORT: THE FUTURE OF INDUSTRIAL AI IN MANUFACTURING (June 2023), https://www.manufacturingleadershipcouncil.com/wp-content/uploads/2023/06/The-Future-Of-AI-In-Manufacturing-MLC-2023.pdf.

$2,500 per violation under California's Unfair Competition Law.[19] For small businesses using chatbots, automated customer service, or AI-powered marketing tools, these requirements create ongoing compliance obligations that larger corporations can more easily manage. In fact, according to the Office of Advocacy's recent research spotlight on small business AI adoption, small businesses are more likely to use AI for marketing functions than large businesses.[20]

The transparency and auditing requirements imposed by various state AI laws create substantial operational costs for small businesses. Some state requirements include retaining third-party auditors to conduct annual independent audits of compliance of high-risk systems that use AI, with penalties including fines of up to $5,000 per violation and potential license revocation for continuous breaches.[21] These mandated professional services represent significant fixed costs small businesses cannot spread across large operational scales like their larger competitors.

Small businesses utilizing AI tools for basic operations such as scheduling, customer service, inventory management, or marketing face uncertainty about which state requirements apply to their activities. California regulates the use of generative artificial intelligence in health care
The lack of uniform national standards forces small businesses to either avoid beneficial AI tools entirely or risk non-compliance with varying state requirements.

The interstate nature of digital commerce means that small businesses using AI systems may inadvertently become subject to multiple state jurisdictions simultaneously. A small e-commerce business using AI for personalized recommendations or customer service could face compliance obligations in every state where it has customers, creating an impossible regulatory burden that effectively restricts small businesses to local or regional markets rather than allowing them to compete nationally.

E. Labor

State labor laws play a crucial role in regulating wages, workplace standards, and employee protections, but they often differ widely from federal mandates and from state to state.[22] For small businesses, navigating these varying laws can create confusion, increase administrative burdens, and raise the risk of costly compliance errors or penalties. In the National Small Business Association's recent survey on regulatory impacts, labor was ranked by small business respondents as the highest issue area for regulatory burden, above financial, health care and health insurance, technology, and environment and energy.[23]

1. Captive Audience

<u>Issue:</u> Captive audience laws prohibit employers from requiring employees to attend meetings where the employer discusses its views on religious, political, or union-related matters. As of August 2025, twelve states, including Connecticut, Maine, Minnesota, New York, Oregon, Vermont, and Washington, have enacted laws prohibiting employers from holding mandatory

[19] CA Bus & Prof Code § 17940 (2024).
[20] U.S. Small Bus. Admin., Off. of Advoc., *AI in Business: Small Firms Closing In* (Sept. 24, 2025), https://advocacy.sba.gov/2025/09/24/ai-in-business-small-firms-closing-in/.
[21] *See* SB 24-205, 74th Gen. Assemb., 2d Reg. Sess. (Colo. 2024) (enacted), effective Feb. 1, 2026 (requiring disclosure and audits of high-risk systems utilizing AI in Colorado); A8884, 2025-2026 Leg., Reg. Sess. (N.Y. 2025) (enacted as Article 8-A, N.Y. Civ. Rights Law § 85–89-d, as amended), effective one year after becoming law (requiring third-party audits on high-risk AI systems in New York).
[22] NAT'L SMALL BUS. ASS'N, *supra* note 12.
[23] *Id.*

meetings with employees concerning religious or political matters, with additional states considering similar legislation.[24]

Small Business Impacts: Small businesses must understand and comply with varying state requirements while simultaneously adapting to changing federal National Labor Relations Board (NLRB) interpretations.[25] Small employers lack dedicated HR and legal resources to navigate complex distinctions between permissible voluntary communications and prohibited mandatory meetings across different jurisdictions. The regulatory uncertainty creates legal risks, as small businesses may inadvertently violate state laws during routine workplace communications or employee meetings. Small employers also face compliance costs for training managers on state-specific restrictions and developing policies that account for different legal standards in each state where they operate. Additionally, the conflict between state laws and evolving federal NLRB positions creates uncertainty about which standard will ultimately prevail, making it difficult for small businesses to develop consistent, compliant workplace communication strategies.

2. Paid Leave

Issue: Nearly half of all states have implemented some form of paid leave program, creating a complex patchwork of regulatory requirements that burden interstate commerce. “Eighteen states and the District of Columbia have enacted have enacted paid sick leave laws that require covered private employers to provide paid sick leave from work to their eligible employees to attend to their own health needs or those of a family member.”.[26] This fragmented regulatory landscape forces businesses operating across state lines to navigate varying compliance requirements, administrative procedures, and funding mechanisms that differ significantly from jurisdiction to jurisdiction. The state-by-state approach to paid leave creates artificial barriers to interstate commerce by imposing inconsistent operational and financial obligations on businesses based solely on their geographic location.

Small Business Impacts: Employer-funded paid leave mandates create significant financial burdens on small businesses through increased operational costs and administrative complexity. Small businesses lack the economies of scale that allow larger corporations to absorb compliance costs across multiple jurisdictions, making them disproportionately vulnerable to the varying state requirements. The administrative burden of implementing different paid leave systems requires additional time and resources that detract from core business operations, forcing small businesses to divert limited resources away from growth and job creation activities. Mandatory state paid leave programs remove the flexibility that small businesses need to craft tailored benefit programs suited to their individual workplaces and employee needs.

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[24] Douglas M. Oldham, NAT’L L. REV. *The State of Employment Law: 12 States Prohibit Captive Audience Meetings* (Aug. 21, 2025), https://natlawreview.com/article/state-employment-law-12-states-prohibit-captive-audience-meetings.

[25] The November 2024 National Labor Relations Board (NLRB) decision in *Amazon.com Services LLC* found that it is unlawful for employers to require employees to attend meetings where the employer expresses its views on unionization, effectively prohibiting captive audience meetings under federal law. *See* Amazon.com Servs. LLC, 373 NLRB No. 136 (Nov. 13, 2024).

[26] U.S. Dep’t of Lab., *Paid Leave*, https://www.dol.gov/agencies/wb/featured-paid-leave (last visited Sept. 29, 2025).

3. Manual Worker Laws

Issue: Manual worker laws in several states require weekly pay for broadly defined "manual workers," creating compliance burdens for small businesses operating across multiple jurisdictions. These laws often classify employees as manual workers beyond traditional expectations, forcing businesses to maintain different payroll schedules that deviate from their standard practices and increase administrative complexity. This patchwork of state mandates creates legal uncertainty and compliance challenges and exposes businesses to large-scale litigation for noncompliance with pay frequency rules, even when employees are fully and timely paid under non-weekly schedules.

Small Business Impacts: Small businesses, especially those unaware of nuanced state definitions, can face lawsuits and significant financial penalties for paying manual workers biweekly or semimonthly instead of weekly, even if all wages are paid in full. Tracking different pay schedules and classifications across state lines creates compliance headaches and requires costly administrative adjustments, which large businesses can absorb but most small businesses cannot. The inconsistencies deter small businesses from expanding into states with restrictive laws, reducing competition and hindering economic dynamism.

4. Gig Worker Organizing Rights & Independent Contractor Definition

Issue: State laws enabling or mandating gig workers[27] to organize, including collective bargaining rights or unionization for independent contractors, creates a fragmented regulatory landscape that directly impacts interstate commerce by imposing different employment obligations and organizational frameworks on small businesses operating across state lines. States with these laws or proposals include California (Assembly Bill 5/Prop 22 legal battles), New York (proposed dependent worker legislation), Washington (Seattle's gig worker collective bargaining ordinance), and New Jersey (misclassification enforcement and ABC test expansion).[28] The New Jersey Department of Labor & Workforce Development (NJDOL) has proposed new rules clarifying the ABC test to determine independent contractor status, sparking significant concern and backlash from the business community, independent contractors, and gig workers.[29] Critics argue the rule change transforms rather than codifies existing law, risks reclassifying many independent contractors as employees, and may contradict federal standards and undermine work flexibility.

Small Business Impacts: The risk of varying unionization rules and collective bargaining obligations deters small firms from entering new markets, stifles innovation, and reduces flexibility that is often essential to the gig economy model. Small businesses operating across multiple states face the seemingly impossible task of navigating conflicting requirements, with some states mandating collective bargaining rights for gig workers while others maintain traditional independent contractor classifications. This regulatory uncertainty forces small businesses to either limit their geographic scope to avoid complex compliance requirements or

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[27] "Gig workers" are those that perform temporary or freelance work on an informal basis, often on digital platforms. The actual definition of "gig worker" may vary from state to state.

[28] The ABC test is a legal standard used to determine whether a worker is classified as an employee or an independent contractor, especially relevant for gig worker rights. "ABC" stands for the three criteria that must all be satisfied for a worker to be considered an independent contractor.

[29] Notice of Proposal, N.J. Dep't of Labor & Workforce Dev., Proposed New Rules: N.J.A.C. 12:11 (ABC Test; Independent Contractors), 57 N.J.R. 894(a) (May 5, 2025).

absorb significant legal and administrative costs to ensure compliance across different jurisdictions.

The varying definitions of worker classification under different state laws create hardships for small businesses that depend on flexible workforce arrangements. California's ABC test requires businesses to prove that contractors are outside their usual course of business, work independently, and operate established businesses, while other states apply more lenient standards. New Jersey's proposed rules add to this complexity by introducing stricter interpretations that could reduce self-employment opportunities, drive up operational costs, and limit workforce adaptability in sectors such as financial services, trucking, insurance, and freelance work. Small businesses that successfully operate using independent contractors in one state may suddenly face reclassification requirements, back wages, and penalty exposure when expanding to states with stricter standards.

Small firms face disproportionate costs when required to engage in collective bargaining processes, as they lack the human resources infrastructure and legal expertise that larger corporations can deploy. The administrative burden of managing union negotiations, implementing collective bargaining agreements, and maintaining compliance with varying state labor organizing requirements can consume resources that small businesses need for core operations and growth. Additionally, the threat of worker misclassification, lawsuits and enforcement actions creates ongoing legal exposure that deters small business expansion and innovation in the gig economy sector. Groups traditionally dependent on independent work would be disproportionately affected, with fewer pathways for entrepreneurship and economic participation.

Small Business Recommendation: The DOJ should direct the NJDOL to reconsider or withdraw the proposed rulemaking and seek broader stakeholder engagement to ensure a fair, transparent, and evidence-driven process. Policymakers should balance worker protections with the need for economic freedom and entrepreneurial opportunity, preserving legitimate independent contracting arrangements and supporting flexible work models crucial to New Jersey’s small businesses and diverse workforce.

5. Mandatory Break Requirements

Issue: State laws imposing mandatory break requirements, such as specific meal and rest periods, vary significantly across the country and can conflict with federal guidelines or each other. States with mandatory break laws include California, New York, Massachusetts, Washington, Oregon, Nevada, Colorado, Illinois, Minnesota, Kentucky, Tennessee, Nebraska, West Virginia, Maryland, New Hampshire, Vermont, and Maine, among others. For businesses operating across state lines, this patchwork creates unique operational burdens and limits flexibility in managing work schedules to best suit local and interstate conditions.

Small Business Impacts: Small businesses must track, implement, and enforce multiple break policy standards for different employee groups in different states, which increases expenses and exposes them to liability for inadvertent errors. Mandatory break laws can prevent small employers from designing shift schedules that best respond to business and employee needs, especially in industries with variable workflow, such as retail, hospitality, and delivery services. The administrative complexity and risk of penalties deter small businesses from expanding into new states with stringent requirements, suppressing competition and discouraging job creation.

The fragmented system disrupts orderly interstate commerce and favors businesses with larger compliance infrastructures

6. Prevailing Wage

Issue: Effective since February 13, 2024, Michigan's Prevailing Wage for State Projects Act requires construction workers working on capital improvement projects sponsored or financed by the state. The Act requires that these workers be paid wages and fringe benefits that are commensurate with the wages and fringe benefits paid to other construction workers working in the same locality on similar contracts.[30]

Small Business Impacts: Expansion of prevailing wage coverage and enforcement makes it vastly more difficult for small businesses to compete and win state projects, including energy-related projects. The law requires all contractors and subcontractors to complete an annual registration before bidding on certain projects, information that small businesses claim is often misused by labor groups for nefarious purposes. Additionally, prevailing wage requirements raise bid costs and exclude lower-cost bidders. This creates a "regulatory tariff" on construction firms and increases project costs for the public.

7. Striking Worker Unemployment Benefits

Issue: Beginning in 2026, Washington State will allow striking workers to receive up to six weeks of unemployment insurance benefits starting 15 to 21 days after a strike or lockout begins.[31] Washington joins New York, which passed legislation in May of 2025 making striking workers eligible for unemployment benefits after a waiting period, and New Jersey, which also moved to allow unemployment benefits for striking workers. This policy departure from traditional unemployment insurance principles expands eligibility to workers who voluntarily participate in work stoppages rather than those who involuntarily lose employment through no fault of their own. The legislation fundamentally alters the balance of labor negotiations by removing financial disincentives for striking while requiring employers to contribute to an insurance system that may fund work stoppages against them. This approach diverges from federal unemployment insurance principles and creates potential conflicts with the underlying purpose of unemployment compensation as a safety net for involuntary job loss.

Small Business Impacts: Small businesses face disproportionate financial and operational burdens from striking worker unemployment benefits. Small employers typically lack the financial reserves to weather extended labor disputes and cannot easily absorb the dual impact of work stoppages and increased unemployment insurance costs. Unlike larger companies with multiple locations or diversified operations, small businesses depend heavily on key employees and cannot easily replace striking workers or shift operations during labor disputes. The policy removes economic incentives for quick resolution of labor disputes, potentially extending work stoppages that can be financially devastating for small businesses operating on thin margins.

This policy affects interstate commerce by creating competitive disadvantages for small businesses located in Washington, New Jersey, or New York, which face higher labor costs and operational risks compared to competitors in other states, potentially affecting their ability to compete in regional and national markets. Extended strikes enabled by unemployment benefits

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[30] Mich. Comp. Laws Ann. §§ 408.1101–408.1126 (West, Westlaw through 2024 Reg. Sess.), enacted by 2023 Mich. Pub. Acts 10, effective Feb. 13, 2024.
[31] 2025 Wash. Sess. Laws ch. 352.

can disrupt supply chains that cross state lines, affecting businesses and consumers in other states that depend on suppliers or manufacturers in Washington, New Jersey, or New York. Higher unemployment insurance premiums create cost disparities that further undermine the competitiveness of those businesses in interstate markets, particularly for small businesses competing on price. Additionally, companies engaged in interstate commerce may relocate operations or avoid expanding into Washington, New Jersey, or New York to minimize exposure to extended labor disputes, ultimately affecting the flow of goods and services across state lines.

8. Occupational Licensing

Issue: Occupational licensing has expanded from affecting 5% of workers in the 1950s to more than one in four workers today, creating significant barriers to interstate commerce and small business formation.[32] While some licenses serve legitimate public health purposes, many function as barriers to entry that limit competition. The current patchwork of state requirements varies dramatically, with some states imposing no licensing for certain occupations while others mandate hundreds of hours of education. This regulatory inconsistency fragments the national labor market and restricts skilled worker mobility across state lines.

Small Business Impacts: Excessive occupational licensing disproportionately harms small business formation by creating substantial barriers to entry that favor established competitors. Small businesses employ nearly half (45.9%) of the private workforce in the United States,[33] yet 43% of small businesses report their operations require occupational or professional licensing, creating significant compliance burdens.[34] Licensing accounts for almost 8% of the total decline in monthly occupational mobility over the past two decades, preventing small businesses from accessing qualified workers and limiting entrepreneurial opportunities.[35] While business dynamism has increased in recent years, the rate at which firms were created decreased from 10 percent of all businesses in 1982 to 8 percent in 2018, with occupational licensing barriers contributing to this entrepreneurial decline by making it more difficult and expensive for individuals to start new businesses in licensed occupations.[36]

Small Business Recommendation: The federal government should encourage states to implement comprehensive licensing reform through incentives and technical assistance while avoiding national standards that could increase requirements in less-regulated states. States should establish universal license reciprocity agreements that recognize out-of-state licenses for practitioners in good standing. Federal facilitation of interstate compacts for all licensed professions would create a more efficient national market, building on existing compacts across the 50 states and territories for specific professions.

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[32] Nat'l Ass'n of Mfrs., *AI's Rising Power in Manufacturing Spurs Call for Smarter AI Policy Solutions* (May 29, 2025), https://nam.org/ais-rising-power-in-manufacturing-spurs-call-for-smarter-ai-policy-solutions-34092/.

[33] U.S. SMALL BUS. ADMIN., OFF. OF ADVOC., SMALL BUSINESS PROFILE OF THE UNITED STATES 1 (2025), https://advocacy.sba.gov/wp-content/uploads/2025/06/United_States_2025-State-Profile.pdf.

[34] Small Bus. Majority, *Small Businesses Support Expanding Occupational Licensing for Justice-impacted Individuals* (Apr. 3, 2024), https://smallbusinessmajority.org/our-research/workforce/small-businesses-support-expanding-occupational-licensing-justice-impacted-individuals.

[35] Morris M. Kleiner & Ming Xu, *Occupational Licensing and Labor Market Fluidity* (Nat'l Bureau of Econ. Rsch., Working Paper No. 27568, July 2020), https://www.nber.org/system/files/working_papers/w27568/w27568.pdf.

[36] Chris Edwards, Cato Inst. *Entrepreneurs and Regulations: Removing State and Local Barriers to New Businesses* (May 5, 2021), https://www.cato.org/policy-analysis/entrepreneurs-regulations-removing-state-local-barriers-new-businesses.

9. Asbestos Training Requirements

Issue: Washington State imposes additional asbestos handling requirements that exceed comprehensive federal regulations already governing asbestos safety protocols.[37] While federal laws and regulations administered by OSHA and EPA provide sufficient worker protection standards for asbestos handling, Washington requires all workers to obtain state certification from the Department of Labor and Industries (LNI) before working on any asbestos projects. The state mandates four-day training courses for workers and five-day courses for supervisors, followed by examinations and potential ongoing refresher courses at LNI's discretion. These requirements create duplicative regulatory burdens that go beyond federal safety standards without demonstrable additional worker protection benefits, effectively creating barriers to entry in the construction industry.

Small Business Impacts: Small construction companies and contractors face significant compliance costs and operational challenges from Washington's duplicative asbestos training requirements. Asbestos training varies by course type, provider, and location, but can cost upwards of $3,000 for a 3-day training. Small businesses must absorb the costs of sending workers to lengthy state training programs plus examination fees, creating substantial financial burdens for companies operating on thin margins. The time required for certification training removes workers from productive work, reducing business capacity and project completion timelines. Small contractors cannot easily afford to have key employees out of service for extended training periods, particularly when they already comply with comprehensive federal asbestos safety requirements. The discretionary nature of refresher course requirements creates ongoing compliance uncertainty and potential costs that small businesses cannot predict or budget for effectively. These barriers may prevent small contractors from bidding on renovation projects involving older buildings, reducing their market opportunities and competitive position.

Washington State's asbestos certification requirements affect interstate commerce by creating barriers for out-of-state contractors and small businesses seeking to perform work in Washington. Contractors licensed and certified in other states who comply with federal OSHA and EPA asbestos regulations must obtain separate Washington-specific certification before performing any asbestos-related work in the state, effectively excluding qualified professionals from competing for projects unless they invest substantial time and money in duplicative training. This creates a protectionist effect that favors in-state contractors already certified under Washington's system while disadvantaging out-of-state competitors.

Small Business Recommendation: Federal agencies should clarify that compliance with federal asbestos safety regulations is sufficient for worker protection and interstate commerce purposes. Small businesses need relief from unnecessary state certification programs that create barriers to entry without providing additional safety benefits beyond federal requirements.

10. Salary Threshold for Exempt Employees

Issue: Washington State's Minimum Wage Act requires employees to meet three tests for exempt status: salary basis, salary threshold, and job duties tests.[38] The state's annually increasing exempt salary thresholds significantly exceed federal requirements, rising from 2020

[37] Wash. Rev. Code § 49.26.110).
[38] Wash. Rev. Code § 49.46 (2024).

to 2028 by $58,240 to reach $93,340 in 2028.[39] Several other states have salary thresholds for exempt employees that exceed federal requirements, but Washington is unique in having one of the most aggressive escalation schedules. This dramatic escalation creates a regulatory environment where Washington's salary threshold requirements far surpass federal Fair Labor Standards Act (FLSA) standards, forcing businesses to navigate conflicting compliance frameworks and putting Washington-based small business at a competitive disadvantage compared to most other states The accelerated schedule of increases prevents businesses from gradually adjusting compensation structures and creates predictable but substantial cost escalations that may not align with business revenue growth or market conditions.

Small Business Impacts: Small employers with one to fifty employees face disproportionate financial burdens from Washington's escalating salary thresholds. Many small businesses cannot afford to pay entry-level employees $93,340 annually to maintain exempt status, forcing them to reclassify workers as non-exempt and absorb increased costs through hourly tracking systems and overtime payments. Small employers lack the administrative infrastructure that larger companies possess to efficiently manage complex timekeeping and overtime calculations for previously exempt employees. The regulatory burden creates operational inefficiencies and increased payroll administration costs that strain small business resources. In the construction industry, these cost increases contribute to labor shortages and reduced housing production as small builders cannot compete for workers or absorb higher labor costs, potentially reducing overall employment opportunities as businesses scale back operations or delay hiring.

Companies engaged in interstate commerce face strategic decisions about whether to locate headquarters, regional offices, or operational facilities in Washington versus neighboring states, with the dramatic salary threshold differential potentially redirecting business investment and job creation to lower-cost jurisdictions. The disparity particularly affects professional services firms, technology companies, consulting businesses, and other knowledge-based industries where exempt employees traditionally handle interstate clients and projects, as these businesses cannot maintain competitive pricing structures when Washington-specific labor costs exceed those of competitors operating from other states.

11. Agricultural Labor Housing Requirements

Issue: Oregon OSHA has implemented stringent agricultural labor housing rules that significantly exceed federal regulations, creating substantial compliance burdens for agricultural operations.[40] These state-specific requirements go beyond existing federal agricultural workers' protection standards and impose new construction, space, and facility requirements that create regulatory fragmentation across state lines. Oregon's farmers already face higher labor costs (70% above the national average) and low net cash income (67% below the national average in 2022), making these mandates particularly challenging.[41] The rules create a complex regulatory environment where Oregon agricultural operations must meet standards that differ significantly from federal requirements and those in neighboring states.

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[39] WAC 296-128-545 (Wash. Admin. Code § 296-128-545).
[40] Or. Admin. R. 437-004-1120 (2024).
[41] HIGHLAND ECONOMICS, LLC., ECONOMIC EFFECTS OF PROPOSED OREGON AGRICULTURAL OVERTIME PAY: EXECUTIVE SUMMARY (Nov. 2021), https://www.oregon.gov/oda/about-us/Documents/Board%20of%20Agriculture/02-22/EconomicsofAgriculturalOvertimePayinOregonNov2021_Executive%20Summary.pdf.

Small Business Impacts: Small and family farm operations face potentially devastating financial impacts from Oregon's enhanced agricultural labor housing requirements. According to the Oregon Farm Bureau, small and mid-sized farms are "faced with an impossible choice: spend $400,000 to $1.5 million per operation on new housing to meet these requirements, or risk losing their workforce."[42] The increased required sleeping space per occupant could cut available housing by 20-50%, while plumbing and other infrastructure requirements add substantial costs. Small farms lack the financial resources to absorb compliance costs that can range from hundreds of thousands to over one million dollars per operation, forcing many to consider exiting the agricultural labor housing market entirely. While regulators plan to make $5 million available through the Oregon Department of Agriculture to assist farm owners, advocates note that amount is relatively small given the scale of required investments. The reduction in available worker housing directly impacts farm operations' ability to maintain adequate workforce levels during critical agricultural seasons.

The dramatic cost differentials force agricultural businesses to make strategic decisions about where to locate operations, potentially redirecting farming activity and investment away from Oregon to states with less burdensome housing regulations, thereby affecting the interstate flow of agricultural production and labor. Housing capacity reductions of 20-50% mean fewer workers can be accommodated in Oregon compared to neighboring states, artificially constraining labor mobility in what is inherently an interstate agricultural workforce system. Small farms facing $400,000 to $1.5 million in compliance costs cannot compete effectively in interstate markets for agricultural products, as these regulatory expenses increase production costs beyond what farms in other states must bear, creating price disadvantages when selling commodities in regional and national markets.

The potential exodus of small and mid-sized farms from providing worker housing could collapse Oregon's agricultural labor infrastructure, forcing the state to rely more heavily on importing food products from other states rather than producing them locally, fundamentally altering interstate commerce patterns in agricultural goods. Additionally, food processors, distributors, and other businesses in the agricultural supply chain that depend on Oregon farm production may need to source products from out-of-state suppliers if Oregon farms reduce production or cease operations, disrupting established interstate commercial relationships and supply chains throughout the Pacific Northwest region.

F. Alcohol & Tobacco

1. The Three Tier System

Issue: The three-tier system derives from the Federal Alcohol Administration Act of 1935 (FAA), which created a post-Prohibition regulatory structure designed to control the production, distribution, and sale of alcoholic beverages. The system mandates legal separation of the industry into three distinct tiers: producers and suppliers (breweries, wineries, distilleries); distributors and wholesalers; and retailers (bars, restaurants, liquor stores). While the FAA establishes the basic framework, it delegates implementation to individual states, allowing each

[42] Or. Farm Bureau, *OR-OSHA's New Farmworker Housing Rules Will Force Out Farmworkers, Shutter Family Farms* (Jan. 9, 2025), https://www.oregonfb.org/post/or-osha-s-new-farmworker-housing-rules-will-force-out-farmworkers-shutter-family-farms.

to establish their own rules provided they conform to the model where producers sell to wholesalers, wholesalers sell to retailers, and retailers sell to consumers.

This system has resulted in a complex web of state-specific regulations that vary dramatically across jurisdictions. Some states maintain strict enforcement of the three-tier separation, while others have created limited exceptions for certain categories of producers or specific circumstances. The interstate nature of alcohol commerce means that small producers must navigate not only federal regulations but also the unique licensing, distribution, and taxation requirements of each state where they seek to sell their products. This regulatory fragmentation effectively allows each state to impose barriers to interstate commerce while operating under federal authorization.

Small Business Impacts: The three-tier system creates substantial barriers to interstate commerce for small alcohol producers by prohibiting direct-to-consumer sales across state lines and requiring navigation of complex state-by-state regulatory schemes. Small breweries, wineries, and distilleries, who make up over 99% of these industries[43], must obtain separate licenses in each state where they wish to sell, with many states requiring different applications, fees, bonding requirements, and compliance procedures. Even after obtaining these licenses, small producers can typically only sell to licensed wholesalers within each state, creating an additional intermediary that captures margin and may lack incentive to promote smaller brands.

The mandatory wholesaler requirement particularly disadvantages small producers who lack the volume and marketing power to attract distributor attention. Large wholesalers often prioritize established brands with proven sales records, leaving small producers struggling to secure distribution partnerships necessary to reach consumers. This creates a catch-22 where small businesses cannot build market presence without distributor support but cannot attract distributors without existing market presence. The result is that many innovative small producers remain confined to their local markets despite consumer demand for their products in other states.

Small alcohol producers face disproportionate compliance costs relative to their revenues, as the fixed costs of obtaining licenses, maintaining separate state compliance systems, and working through multiple distribution networks cannot be spread across large production volumes. These producers must maintain separate relationships with wholesalers in each state, each with different pricing structures, payment terms, and promotional requirements. The administrative burden of managing these multiple relationships, combined with the reduced margins from mandatory wholesaler markups, significantly impacts small producers' profitability and growth potential.

The system also prevents small producers from developing direct customer relationships and receiving immediate market feedback that would help them improve their products and business operations. Unlike other industries where small businesses can build loyalty through direct sales and customer service, alcohol producers must rely on intermediaries who may not effectively communicate brand stories or customer preferences back to the producer.

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[43] Firms with less than 500 employees make up 99.6% of breweries, wineries, and distilleries. U.S. Census Bureau, *2022 SUSB Annual Data Tables by Establishment Industry*, (Apr. 2025), https://www.census.gov/data/tables/2022/econ/susb/2022-susb-annual.html.

G. Environment

1. Climate Superfund Laws

Issue: State-level climate superfund laws and legislation seek to impose retroactive financial liability on fossil fuel companies for climate change damages dating back as far as 25 years.[44] New York and Vermont have enacted "climate change superfund acts" that impose retroactive liability on companies for climate damage based on historical global emissions rather than current operations within state borders.[45] New York's proposed greenhouse gas reporting rules would establish state-specific emissions reporting that may conflict with federal Environmental Protection Agency (EPA) requirements.[46]

Small Business Impacts: Small businesses face substantial impacts from these "climate superfund laws." Energy costs are likely to increase significantly as covered companies pass through compliance costs, legal expenses, and penalty payments to consumers. Small businesses, which typically operate on thin margins and lack the resources to hedge against energy price volatility, will bear a disproportionate burden of these increased operational costs.

The retroactive nature of these laws creates dangerous precedents that threaten fundamental business planning principles. Small businesses depend on regulatory predictability to make long-term investments, secure financing, and develop sustainable business models. When states can retroactively impose massive financial penalties for previously lawful business activities, it undermines the legal certainty that small enterprises need to operate effectively. This regulatory uncertainty may discourage small business formation, expansion, and innovation in energy-related sectors.

The compliance and reporting requirements associated with these laws may eventually extend to small businesses through supply chain mandates or expanded regulatory frameworks. Small businesses lack the legal and administrative resources that large corporations possess to navigate complex environmental liability regimes. Even indirect exposure to these requirements through customer demands or contractual obligations could impose significant compliance burdens on small enterprises that are already struggling with regulatory complexity.

Small Business Recommendation: The federal government should enforce federal preemption and encourage states to focus on prospective, innovation-based policies that encourage small business participation in energy transitions while maintaining regulatory predictability. Small businesses benefit from clear, consistent legal frameworks that allow for predictable business planning.

2. Extended Producer Responsibility (EPR) Laws

Issue: Oregon, Colorado, California, Maine, Minnesota, Maryland and Washington have passed Extended Producer Responsibility (EPR) laws. These laws seek to hold producers responsible for the entire life cycle of their products. Once of the most burdensome EPR laws is Oregon's Plastic Pollution and Recycling Modernization Act, which creates an unprecedented EPR program that broadly regulates entities across the supply chain, including wholesalers and

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[44] *See* Climate Change Superfund Act, Ch. 679, 2024 N.Y. Laws (codified as N.Y. Envtl. Conserv. Law § 27-27 et seq.) and Climate Superfund Act, 2024 Vt. Acts & Resolves 122 (codified as 10 V.S.A. § 8281 et seq.).
[45] 2024 Vt. Acts & Resolves 122.
[46] 6 N.Y.C.R.R. § 253.

distributors who have no control over packaging design.[47] The law requires "producers" (manufacturers, wholesalers, distributors, and importers) to join a Producer Responsibility Organization (PRO) and pay “eco-modulated” fees on virtually every category of packaging materials. Unlike traditional EPR programs that target specific products with transparent fees, Oregon's system delegates vast regulatory authority to a single private entity, the Circular Action Alliance (CAA), which operates with a confidential fee methodology and minimal oversight.

Small Business Impacts: Small businesses face disproportionate burdens under Oregon's EPR law. The law's definition of "producer" sweeps in wholesalers and distributors with no control over packaging decisions, subjecting them to potentially crushing fees that may exceed their profit margins or even the product's value. The fee methodology is confidential, which prevents businesses from understanding or challenging their assessments, creating unpredictable compliance costs. Small businesses above the minimal exemption threshold ($5 million revenue or one ton of materials annually) face the full regulatory burden without the resources or market leverage that large corporations possess to absorb or pass through costs. Small businesses are effectively excluded from accessing fee reductions through expensive life cycle evaluations due to prohibitive technical and financial costs.[48]

The program's complexity requires specialized compliance infrastructure that small businesses typically lack, while dispute resolution is limited to private arbitration with the PRO rather than accessible administrative or judicial processes. The monopolistic structure, with only one approved PRO charging a $150,000 application fee, eliminates competitive alternatives and concentrates power in an entity with financial interests in maximizing fees. The CAA recently doubled producer fees, claiming that previously published rates only reflected a half-year. This unexpected increase has strained budgets for small producers and distributors operating in Oregon. Farmers and ranchers selling into the state report that packaging fees now exceed profit margins, forcing some to reconsider selling to Oregon markets. Small distributors and retailers have also cited the administrative complexity and lack of transparency in the program as a major barrier.

Small Business Recommendation: The federal government should consider striking down state EPR programs as barriers to interstate commerce. Additionally, the Federal Trade Commission should investigate whether the fees set by a PRO violate federal antitrust laws, in part, by creating barriers to entry for new participants or by setting minimum prices.

Another potential remedy includes federal oversight of third-party administrators to ensure transparency, fairness, and due process protections for small businesses. States should establish meaningful small business exemptions beyond minimal thresholds, potentially exempting businesses below $25 million in revenue or providing sliding-scale fee structures.

Fee methodologies must be transparent and subject to public review, with clear appeals processes through state administrative procedures rather than private arbitration. Small businesses should receive dedicated representation in PRO governance structures and access to technical assistance for compliance. States should conduct comprehensive small business economic impact analyses

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[47] Plastic Pollution and Recycling Modernization Act, S.B. 582, 2021 (codified as OR. REV. STAT. §§ 459A.860–459A.975).

[48] A Life Cycle Evaluation is a methodology used to categorize and quantify the environmental impacts of a product or package from raw material extraction (cradle) until disposal/end-of-life (grave).

before implementing EPR programs and establish regulatory safeguards preventing private entities from exercising unchecked authority over fee assessments.

Most importantly, other states should avoid Oregon's model of delegating broad regulatory power to private monopolistic entities without adequate procedural protections. Future EPR legislation should maintain direct state oversight, provide competitive alternatives to single PROs, and ensure that compliance costs are proportionate to businesses' actual control over packaging decisions and ability to bear regulatory burdens.

3. Chemical Product Safety and Toxics Regulations

Issue: Multiple states have enacted chemical safety laws that exceed or conflict with federal standards, creating a fragmented regulatory landscape. California's Proposition 65[49] requires warning labels on products with extremely low chemical levels, while its Safer Consumer Products law[50] identifies "chemicals of concern" that may conflict with EPA and FDA assessments. Maine's Toxics in Food Packaging law and comprehensive PFAS restrictions,[51] Minnesota's "Amara's Law" PFAS phase-out,[52] New Mexico's PFAS Protection Act,[53] New York's Toxic Chemicals in Children's Products Law[54] and electronic enclosure regulations, and Washington's Safer Products Program[55] all impose state-specific requirements that often diverge from federal Toxic Substances Control Act (TSCA), Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and Federal Food, Drug, and Cosmetic Act (FDCA) standards. These laws frequently use hazard-based approaches without considering actual risk levels or exposure, and many allow private parties to enforce compliance through lawsuits initiated by individuals acting on their own behalf.

Small Business Impacts: Small businesses face disproportionate burdens from this regulatory patchwork. They lack resources to navigate conflicting state and federal requirements, often forcing them to reformulate products for individual states or adopt the most restrictive standards nationwide. Compliance costs include specialized testing, labeling modifications, supply chain transparency requirements, and legal fees from private enforcement actions. Small manufacturers may struggle to obtain Currently Unavoidable Use designations required in Maine and Minnesota due to expensive public rulemaking processes. The regulatory uncertainty discourages product development and market expansion, while some small businesses may exit certain state markets entirely. Warning label proliferation under laws like California's Proposition 65 creates consumer confusion and potential liability exposure for businesses that cannot afford comprehensive legal review of every product component.

Small Business Recommendations: The DOJ should analyze these laws and determine whether they conflict with TSCA, RCRA, and/or FIFRA. Additionally, any state level regulatory frameworks should be risk-based rather than hazard-based, with clear scientific justification for restrictions that exceed federal standards. States should also provide streamlined processes for

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[49] California Health and Safety Code Sections 25249.5-25249.13.
[50] Assembly Bill 1879.
[51] LD 1537.
[52] Minn. Stat. Section 116.943.
[53] HB 212.
[54] New York Environmental Conservation Law Section 37-0905.
[55] Chapter 70A.350 RCW.

necessary use exemptions and safe harbors for small businesses following federal standards. Private enforcement provisions should include reasonable limitations to prevent abusive litigation, and states should coordinate with federal agencies to ensure consistency in chemical assessments and regulatory approaches.

4. Refrigerants

Issue: New York's Department of Environmental Conservation adopted the Part 494 regulation with minimal notice, only nine days before it took effect in 2024.[56] This regulation bans specific refrigerants and heating, ventilation, air conditioning, and refrigeration (HVAC&R) equipment based on their Global Warming Potential (GWP) ratings more rapidly and stringently than the American Innovation and Manufacturing (AIM) Act. The regulation includes 20-year GWP limits of 10 for many new HVAC&R systems by 2034 and thereby supports the adoption of natural refrigerant-based applications. This forces transition to ultra-low GWP A3 flammability refrigerants including carbon dioxide, propane, and ammonia, which are explosive, high-pressure, and potentially toxic refrigerants that pose safety risks in residential and commercial applications. More flammable refrigerants, like those in Class A3, require specialized systems and careful handling. Similar standards are expected in California and Washington state, creating a fragmented regulatory landscape that exceeds federal AIM Act requirements and potentially conflicts with EPCA preemption principles.[57]

Small Business Impacts: Small HVAC wholesale distributors, contractors, and service companies face significant operational and safety challenges from New York's accelerated refrigerant transition requirements. Small HVAC contractors must invest in specialized training and equipment to safely handle A3 flammable refrigerants, creating substantial compliance costs for businesses operating on thin margins. The cost of requiring basic training and demonstrating basic competencies to handle these substances is dwarfed by the potential costs in terms of loss of life and property that could result from their improper handling. Small wholesale distributors must navigate complex inventory management as they transition from established refrigerants to new, potentially dangerous alternatives while ensuring proper storage and handling protocols. The rapid implementation timeline provides insufficient time for small businesses to adapt their operations, train personnel, and invest in necessary safety equipment. Small contractors also face increased liability exposure when working with explosive and toxic refrigerants in residential and commercial settings, potentially increasing insurance costs and safety risks.

Small Business Recommendations: Intervention by the EPA is necessary to prevent state refrigerant regulations from creating fragmented compliance requirements that exceed federal AIM Act standards. The DOJ should challenge the state regulations mandating ultra-low GWP refrigerants that pose safety risks on the basis that they conflict with federal appliance efficiency standards under EPCA.

States should also provide small businesses with extended implementation timelines, comprehensive safety training programs, and federal funding assistance to safely transition to new refrigerant technologies. The Department of Energy should not allow state mandates for

[56] N.Y. Comp. Codes R. & Regs. tit. 6, § 494 (2024).
[57] *See* Cal. Health & Saf. Code § 25000 *et seq*.; Wash. Rev. Code § 70A.60; 42 U.S.C. § 7675.

flammable refrigerants which create safety risks that outweigh environmental benefits, particularly in residential applications. Additionally, federal oversight should ensure that state refrigerant regulations do not create barriers to interstate commerce for small HVAC distributors and contractors operating across multiple jurisdictions.

5. Air Quality

Issue: States are implementing air quality regulations that exceed federal Clean Air Act requirements, creating a fragmented regulatory landscape that imposes varying compliance obligations on businesses operating across state boundaries. These state-specific standards force businesses to comply with more stringent requirements than those established through the federal regulatory process, which already incorporates extensive scientific review and stakeholder input.

Colorado's proposed revisions to Regulation 30[58] would establish health-based standards for air toxins that may lack sufficient scientific foundation and impose requirements that exceed federal hazardous air pollutant regulations under Section 112 of the Clean Air Act.[59]

Minnesota's proposed cumulative impacts analysis requirements for air permits in "environmental justice[60] areas" represent another layer of regulatory complexity, requiring businesses to assess not only their individual emissions but also the combined effects of multiple pollution sources in designated communities.

Small Business Impacts: The costs of environmental monitoring, reporting, and permit modifications represent fixed expenses that cannot be spread across large production volumes, making these requirements particularly burdensome for smaller operations. Environmental consultants, air quality monitoring equipment, and specialized laboratory analyses required for compliance with state-specific standards can cost tens of thousands of dollars annually, representing a significant percentage of small business revenues.

Environmental justice-related air permitting requirements create hardships for small businesses located in or seeking to locate in and provide jobs and services for designated communities. Cumulative impacts analyses can significantly delay project approvals, sometimes extending permitting timelines by months or years while businesses await completion of complex environmental assessments. These delays impose carrying costs, prevent businesses from responding quickly to market opportunities, and may force companies to abandon projects altogether due to regulatory uncertainty and extended approval processes.

Additionally, small businesses operating across multiple states must comply with varying air quality standards that may conflict with each other or with federal requirements. A manufacturing facility with operations in Colorado, Minnesota, and other states would be required to maintain separate monitoring programs, reporting systems, and compliance strategies for each jurisdiction, multiplying administrative costs and legal risks. This forces businesses to

[58] House Bill 22-1244.
[59] 5 Colo. Code Regs. § 1001-34 (proposed Sept. 2025); 42 U.S.C. § 7412.
[60] *See* Minn. Pollution Control Agency, *Cumulative Impacts Rulemaking*, https://www.pca.state.mn.us/get-engaged/cumulative-impacts-rulemaking (last visited Oct. 23, 2025).

either limit their geographic scope to avoid regulatory complexity or hire specialized environmental staff and consultants to navigate the maze of state-specific requirements.

Small Business Recommendations: The Clean Air Act is based on cooperative federalism. The federal government sets standards and the states have the flexibility to decide how to implement those standards.[61] The EPA should examine state laws to ensure that they are not exceeding Clean Air Act requirements. States should also demonstrate clear scientific justification for their standards and provide adequate transition periods for businesses to achieve compliance without disrupting ongoing operations.

State environmental justice provisions should include reasonable timelines, cost-effective compliance alternatives, and safe harbors for small businesses that demonstrate good faith efforts to minimize environmental impacts. EPA should encourage states to establish expedited permitting tracks for small businesses in environmental justice areas, recognizing that lengthy delays can force business closures that may harm the economic vitality of these communities. Cumulative impacts analyses should focus on significant emission sources rather than imposing complex assessment requirements on all businesses regardless of their actual environmental contribution.

6. WOTUS Wetland Protection

Issue: Following the Supreme Court's decision in *Sackett v. EPA*, which clarified federal "waters of the United States" (WOTUS) jurisdiction, Washington State has expanded wetland protections beyond federal requirements through multiple statutory frameworks.[62] The State Water Pollution Control Act, Shoreline Management Act, and Growth Management Act authorize the Department of Ecology and local jurisdictions to regulate wetlands beyond WOTUS boundaries.[63] Local governments can adopt critical areas ordinances that further restrict buildable land, creating a layered regulatory system where state and local wetland protections exceed federal standards. This regulatory expansion effectively nullifies the relief that small businesses might have expected from the *Sackett* decision, as state law continues to impose broader wetland restrictions regardless of federal jurisdictional changes.

Small Business Impacts: Small homebuilders and developers face increased regulatory compliance costs from state wetland protections that exceed federal requirements. Builders must navigate complex critical areas ordinances at the local level and often pay fees to permitting jurisdictions in lieu of building in designated wetlands or critical areas. These in-lieu fees create additional project costs that small builders struggle to absorb, particularly when combined with lengthy permitting processes and environmental assessments required for projects near state-defined wetlands. Small businesses often lack the resources to challenge local wetland determinations or navigate complex appeal processes, making them vulnerable to inconsistent local interpretations of critical areas regulations. The expanded state wetland jurisdiction also

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[61] *See* KATE R. BOWERS, CONG. RSCH. SERV. LSB11309, COOPERATIVE FEDERALISM AND THE CLEAN AIR ACT: EPA'S GOOD NEIGHBOR INTERSTATE AIR POLLUTION RULE 3 (May 8, 2025), p.3, https://advocacy.sba.gov/wp-content/uploads/2025/10/Comment-Letter-Recommendations-for-Restoring-American-Seafood-Competitiveness.pdf.
[62] Sackett v. EPA, 598 U.S. 651 (2023).
[63] Wash. Rev. Code §§ 90.48; 90.58; 36.70A (2024).

reduces available buildable land, increasing land costs and project complexity for small developers who cannot easily relocate projects or absorb development delays.

Small Business Recommendations: The EPA and U.S. Army Corps of Engineers should provide clear guidance that limits state wetland regulation to areas outside of federal jurisdiction, ensuring that the *Sackett* decision provides meaningful regulatory relief for small businesses. The U.S. Army Corps of Engineers should establish uniform wetland delineation standards that prevent inconsistent state and local interpretations that burden small developers.

7. Regional Greenhouse Gas Initiative

Issue: The Regional Greenhouse Gas Initiative (RGGI) operates as a multi-state compact among ten northeastern states (New York, Connecticut, Vermont, Maine, New Hampshire, Massachusetts, Rhode Island, New Jersey, Delaware, and Maryland) that impose carbon dioxide (CO_2) emission caps and mandatory allowance purchases on power generators. The initiative functions as a de facto carbon tax, with small businesses informing Advocacy of allowance prices at $22.35 per ton of CO_2. This mechanism adds substantial costs to electricity generation, approximately $23.25/net Megawatt-hour (MWh) for coal-fired facilities and $9.60/net MWh for efficient natural gas plants.

Small Business Impacts: Small businesses in RGGI states face artificially inflated electricity prices due to the allowance cost pass-through mechanism, creating a significant energy cost burden that disproportionately affects smaller enterprises. Unlike large corporations, small businesses often lack the resources to hedge against energy price volatility or relocate operations to lower-cost jurisdictions, making them particularly vulnerable to RGGI's pricing effects. The initiative creates an uneven competitive playing field where small manufacturers and energy-intensive small businesses become less competitive compared to counterparts in non-RGGI states, potentially forcing business relocations or closures based solely on geographic location.

Small Business Recommendations: The federal government should challenge the RGGI's constitutionality under the Compact Clause[64] and seek to void the program, as this multi-state agreement improperly affects interstate commerce and federal regulatory jurisdiction over electricity markets. Federal oversight mechanisms should be implemented to prevent state-level programs from creating artificial interstate commerce barriers through energy pricing distortions that disadvantage businesses based solely on their geographic location within the national market.

H. Transportation

1. Electronic Logging Devices

Issue: Electronic Logging Devices (ELDs) were created under federal mandate to ensure trucking safety and Hours of Service compliance. However, third-party platforms and freight brokers are now demanding constant access to this sensitive data for commercial vetting purposes that go far beyond the original regulatory intent.

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[64] U.S. CONST. art. I, §10.

Platforms such as Highway require trucking companies to share ELD data during onboarding but fail to provide transparency about data use, adequate opt-out mechanisms, or clear disconnection processes as required by state privacy laws including California's Privacy Rights Act (CPRA), Virginia's Consumer Data Protection Act (VCDPA), and Connecticut's Data Privacy Act (CTDPA).[65] Highway is not an ELD platform itself, but a compliance and verification platform that integrates with ELD platforms. Trucking companies use Highway to provide data to freight brokers for verification while still using a separate, FMCSA-certified ELD provider for their logging and tracking.

Fragmented state-by-state privacy regulation creates compliance uncertainty for interstate trucking operations, while brokers may deny business to carriers who refuse ELD connections, potentially restraining trade. ELD data contains highly sensitive information including precise geolocation, driver patterns, health information, and personal identifying information that was never intended for continuous third-party commercial access.

Small Business Impacts: Small trucking companies face disproportionate burdens from ELD data sharing requirements imposed by freight brokers and load platforms. These businesses must pay for federally mandated ELD services to maintain compliance but then lose control over sensitive data that includes real-time location tracking, driver health status, and personal communications. Small carriers operating across multiple states cannot practically navigate the complex patchwork of state privacy laws to understand their opt-out rights, what data is being shared, or how to exercise protections without losing business opportunities.

When brokers require ELD connections as a condition of doing business, small carriers face an impossible choice between data privacy and market access. The lack of clear disconnect options and the practice of flagging carriers who request disconnection effectively coerces ongoing data sharing. Small businesses also face increased security risks, as multiple broker connections through a single ELD create vulnerability to data breaches, continuous location tracking by criminals for cargo theft, and potential manipulation of compliance records essential for federal regulatory requirements. Small businesses informed Advocacy that they have verified digital footprints showing overseas access to these platforms from countries like Armenia, Afghanistan, and India.

Small Business Recommendation: Federal action is necessary to address the misuse of ELD data beyond its intended safety and compliance purposes. Federal agencies should establish clear guidelines mandating universal opt-out mechanisms for ELD data sharing that prevent business denial and preserve interstate commerce. The Federal Trade Commission (FTC) and U.S. Department of Transportation (DOT) should collaborate to create disclosure standards requiring platforms and brokers to clearly explain what ELD data is collected, how it is used, who has access, and provide easy disconnection processes. Small businesses need protection from being denied work for refusing continuous ELD connections, as this practice may constitute restraint of trade.

2. Commercial Motor Vehicle Inspection

Issue: Federal regulation 49 CFR § 396.17 establishes periodic inspection requirements for commercial motor vehicles, creating a fragmented regulatory system where 27 states recognize

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[65] *See* Cal. Civ. Code §§ 1798.100–1798.199.100 (2025); Va. Code Ann. §§ 59.1-571 to -581 (2025); Conn. Gen. Stat. §§ 42-515 to -520 (2025).

federal compliance as sufficient while 23 states maintain separate inspection requirements. States such Pennsylvania do not accept federal compliance, forcing interstate carriers registered in these states to return home for annual inspections because Pennsylvania's inspection standards are more stringent than federal requirements.

This regulatory patchwork undermines the uniformity that federal regulation intends to provide for interstate commerce. The lack of reciprocity creates artificial barriers where carriers meeting more comprehensive federal inspection standards cannot satisfy home state requirements that may be less thorough. Pennsylvania-registered carriers cannot utilize federal inspections available in other states, creating operational inefficiencies and competitive disadvantages.

Small Business Impacts: Small trucking companies and owner-operators registered in non-reciprocal states face significant financial and operational burdens from mandatory home state inspections. Carriers are required to bear the costs of deadhead miles (miles a truck travels without any cargo) and the resulting loss of revenue when returning home for inspections without carrying a paying load. These expenses create significant cash flow pressures, costing small carriers thousands of dollars annually in lost revenue and fuel costs. Larger fleets with greater operational flexibility are better equipped to absorb and manage these costs. Small businesses have informed Advocacy that they may strategically avoid registering in certain states to escape burdensome inspection requirements, limiting their operational options and potentially forcing them into less favorable business environments with higher taxes or fees. The inspection mandate creates competitive disadvantages where small carriers face higher compliance costs per vehicle compared to larger national fleets that can distribute expenses across extensive operations and utilize dedicated compliance staff. Small owner-operators with limited resources cannot easily absorb the operational disruptions caused by mandatory home state returns, potentially forcing them to decline profitable loads or routes that would require inspection timing conflicts.

Small Business Recommendation: The DOT should revise 49 CFR § 396.17 to require all states to accept federal inspection compliance, establishing uniform federal standards. Federal preemption should eliminate the current patchwork of state requirements that burden interstate commerce and create competitive disadvantages for small businesses. Alternatively, DOT could condition the funding provided to the states for commercial motor vehicle inspections through their Motor Carrier Safety Assistance Program (MCSAP) on strict adherence to the federal inspection standard. This would motivate states to ensure that carriers meeting stringent federal standards are not subjected to additional state requirements and promote regulatory efficiency and competitive balance in interstate trucking markets.

I. National Shellfish Sanitation Program

Issue: Washington State's implementation of the National Shellfish Sanitation Program creates competitive disadvantages for local producers operating in interstate markets.[66] While the federal program requires one annual inspection for shell stock shippers, Washington mandates two inspections per year, doubling compliance costs beyond federal standards. The state has also imposed substantial fee increases that exceed requirements in other coastal states operating under the same federal shellfish safety framework. This regulatory divergence undermines the

[66] Wash. Admin. Code § 246-282-005 (2025); U.S. Food & Drug Admin., *National Shellfish Sanitation Program (NSSP)*, https://www.fda.gov/food/federal-state-local-tribal-and-territorial-cooperative-human-food-programs/national-shellfish-sanitation-program-nssp (last revised Sept. 3, 2024).

uniformity of the federal National Shellfish Sanitation Program, which was designed to ensure consistent safety standards across participating states.

Small Business Impacts: Washington State's enhanced shellfish regulations impose fee increases of over 300% (from $1,400 to $5,800) on small shellfish farms, creating cash flow challenges and competitive disadvantages in interstate markets.[67] These enhanced requirements create competitive disadvantages in interstate markets where Washington producers compete against shellfish from other states operating under standard federal requirements. Small operations face the choice of absorbing higher regulatory costs that reduce profitability or passing costs to consumers, potentially pricing their products out of competitive national markets.

Small Business Recommendation: The Food and Drug Administration and the National Oceanic and Atmospheric Administration should require states to align with the federal inspection standard to prevent state-level regulatory divergence from creating barriers to interstate commerce that particularly burden small businesses operating in national markets.

J. Energy

1. Energy Standards

Issue: On February 13, 2024, Michigan Public Acts 229, 231, 233, 234, and 235 fundamentally restructured the state's energy regulatory framework by amending the Michigan Integrated Resource Plan (MIRP) requirements.[68] The MIRP is a long-term comprehensive roadmap that electric utilities must file every five years with the Michigan Public Service Commission to outline how they will meet future energy and capacity needs for their customers in a reliable and cost-effective manner. The 2024 changes established aggressive clean energy standards, increased renewable energy and energy waste reduction mandates, and created a voluntary siting process for renewable energy projects of statewide significance.[69] These requirements impose some of the nation's most stringent clean energy requirements, mandating that utilities achieve 100% clean energy by 2040 while simultaneously banning traditional baseload generation sources.

Critically, these acts repealed Michigan's longstanding "no stricter than federal" provision, which previously prevented state policymakers from adopting energy regulations more stringent than federal standards.[70] This regulatory departure allows Michigan to impose requirements that exceed federal energy policies, creating a bifurcated regulatory environment where Michigan businesses face compliance obligations that competitors in other states do not encounter. The elimination of federal alignment requirements effectively permits Michigan to set de facto national energy policy for businesses operating across state lines, as companies must often adopt the most restrictive standards across all their operations.

Small Business Impacts: The complete ban on baseload generation sources like natural gas by 2040 creates significant operational risks for small businesses that depend on reliable, affordable energy for manufacturing, food service, and other energy-intensive operations. Small businesses

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[67] Wash. State Dep't of Health, *Shellfish Program Fees Rule Revision*, https://doh.wa.gov/community-and-environment/shellfish/rules/program-fees-rule-revision (last visited Oct. 23, 2025).
[68] Mich. Comp. Laws § 460.6t (2025).
[69] *Id.*
[70] Mich. Comp. Laws §§ 24.232, 24.245 (amended 2018, repealed 2023).

may lack the resources to invest in on-site generation or energy storage systems that might mitigate grid reliability concerns, making them particularly vulnerable to supply disruptions that could result from premature retirement of dispatchable generation assets.

The new compliance requirements and regulatory uncertainties discourage small business investment and expansion in Michigan, as companies cannot accurately forecast long-term energy costs or availability under the accelerated transition timeline. Small manufacturers cannot easily relocate production facilities if energy costs become prohibitive or grid reliability deteriorates. The regulatory complexity of navigating Michigan's enhanced requirements creates ongoing administrative burdens for small businesses that lack dedicated regulatory compliance staff.

2. Natural Gas Restrictions

Issue: Washington State's energy code creates regulatory conflicts with federal law by effectively restricting natural gas appliances covered under the federal Energy Policy and Conservation Act (EPCA), which expressly prohibits state regulation of these appliances.[71]

Small Business Impacts: Small homebuilders and contractors face disproportionate cost burdens from Washington's energy code requirements. Since 2009, building code changes have added an average of $39,876 to new home construction costs, with the 2021 energy code alone adding $13,474 per home.[72] Small builders often lack the resources to absorb these increased costs or develop alternative building systems that meet the stringent performance requirements without natural gas infrastructure. Many state energy codes, including Washington's, use a performance-based credit or point system where builders can earn credits for energy-efficient features. Buildings must achieve a certain number of points or credits to comply with the code.[73] The credit system forces small builders to invest in expensive technologies or building modifications that larger builders can more easily finance and implement across multiple projects. Small contractors must also invest in training and certification for new building techniques and technologies, creating additional compliance costs.

Small Business Recommendation: DOJ should review the Washington state law to determine whether it conflicts with the EPCA. If so, the law should be struck down. Additionally, federal legislation explicitly prohibiting state natural gas bans would provide regulatory certainty for small builders and contractors. The DOE and the Federal Energy Regulatory Commission (FERC) should provide guidance to prevent states from circumventing EPCA through performance-based restrictions that achieve the same outcome as explicit bans.

3. Electric Vehicle Requirements

Issue: Washington State has implemented comprehensive electric vehicle (EV) mandates that create regulatory and infrastructure challenges for small businesses. The state building code requires EV charging capabilities in all new buildings with on-site parking, with some counties and cities imposing even stricter requirements.[74] Simultaneously, Washington's Clean Vehicles Program adopted new emissions standards, mandating that all new passenger cars, trucks, and

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[71] Wash. Rev. Code § 19.27A.020(3) (enacted by Initiative Measure No. 2066, approved November 5, 2024).
[72] BIAW Wash. Ctr. for Hous. Stud., *The Real Cost of Regulations in Washington* (Feb. 7, 2023). https://housingstudies.biaw.com/reports/the-real-cost-of-regulations-in-washington.
[73] Wash. Admin. Code § 51-11R-406 (2021) (Section R406 - Additional Efficiency Credits).
[74] RCW 19.27.540 (2024); WAC 51-50-0429 (2024).

SUVs sold in the state be zero emission by 2035.[75] This creates a regulatory framework where consumers will be required to purchase electric vehicles while builders must install charging infrastructure, despite concerns about grid capacity and consumer demand. The interconnected nature of these requirements creates compounding compliance burdens while potentially exceeding state authority over vehicle emissions standards that may conflict with federal Clean Air Act provisions.[76]

Small Business Impacts: Small homebuilders and contractors face increased construction costs from mandatory EV charging installation requirements, even when homeowners may not need or want these capabilities. These additional costs contribute to housing affordability challenges while small builders lack the resources to absorb or efficiently spread infrastructure costs across projects like larger construction companies. Small automobile dealers face business model disruption from the 2035 zero-emission mandate, potentially limiting inventory options and forcing investments in EV sales infrastructure and training. The regulatory timeline creates uncertainty for small dealers who must plan inventory and facility investments while navigating potential conflicts with federal vehicle standards. Small businesses across sectors may face increased operational costs if required to install EV charging infrastructure, while the state's electrical grid limitations raise questions about the reliability and cost of power needed to support widespread EV adoption.

Small Business Recommendation: The DOE should assess whether state vehicle emission mandates effectively eliminate consumer choice conflict with federal authority under the Clean Air Act and interstate commerce provisions. The federal government should provide guidance on grid capacity and infrastructure readiness before states mandate widespread EV adoption that could strain state and regional electrical systems.

K. California Disabled Persons Act

Issue: The California Disabled Persons Act (CDPA) works in conjunction with the Unruh Civil Rights Act to prohibit disability-based discrimination by business establishments and require reasonable accommodations for individuals with disabilities.[77] While the CDPA serves the important purpose of ensuring equal access to public accommodations, its implementation creates significant interstate commerce concerns for small businesses operating across state boundaries. The Act requires businesses to provide full and equal access to their websites for individuals with disabilities, including making websites and web-based services accessible to screen readers, voice recognition software, and other assistive technologies. This extends California's regulatory reach to any business with an online presence accessible to California residents, regardless of the business's physical location.

The CDPA's broad application to digital commerce and physical accommodations creates a patchwork of compliance requirements that vary significantly from other states' disability access laws. This regulatory inconsistency forces businesses engaged in interstate commerce to navigate

[75] Wash. Admin. Code § 173-423.
[76] 42 U.S.C. § 7543(a) (preemption); 42 U.S.C. § 7543(b) (California waiver).
[77] Cal. Civ. Code §§ 54–55.32 (2024); Cal. Dep't of Rehab., *Unruh Civil Rights Act*, https://www.dor.ca.gov/Home/UnruhCivilRightsAct (last visited Oct. 23, 2025).

California’s heightened standards even when their primary operations occur in other jurisdictions with different requirements.

Small Business Impacts: In addition to regulatory compliance costs, the litigation environment surrounding the CDPA creates particular hardships for small businesses. The availability of attorneys’ fees and statutory damages under California law incentivizes aggressive enforcement actions that can result in substantial settlement costs even for minor technical violations. Small businesses frequently face demands for immediate compliance modifications along with financial settlements, creating cash flow pressures that larger enterprises can more easily absorb. This litigation risk is particularly acute for businesses operating in multiple states, as they must simultaneously comply with varying accessibility standards while facing potential liability under California's more expansive requirements.

This regulatory complexity forces small businesses to either adopt the most restrictive standards from all applicable jurisdictions, significantly increasing compliance costs, or risk potential liability for failing to meet California's specific requirements. The resulting compliance burden can deter small businesses from expanding their operations or serving customers in multiple states.

III. Conclusion

The state laws and practices examined in these comments demonstrate how individual states have effectively extended their regulatory authority beyond their borders, forcing small businesses nationwide to comply with the most restrictive standards regardless of their primary location. These regulatory disparities create artificial barriers to interstate commerce that particularly disadvantage small entities, which may lack the resources to navigate complex compliance requirements across multiple jurisdictions.

Small businesses employ nearly half of America's private workforce yet face mounting challenges from state-level regulations that fragment national markets and increase operational costs. When states enact stricter standards than federal law requires or impose requirements that target out-of-state businesses, they undermine the principles of federalism and create competitive disadvantages that can force small businesses to abandon expansion plans or relocate operations. The resulting compliance costs are especially difficult for small businesses to absorb and often translate into higher prices for consumers nationwide.

The Office of Advocacy supports the DOJ’s review of state practices and encourages the Department to consult with relevant federal agencies and Congress on a conditional funding approach that would allow states to maintain ultimate control over their regulatory frameworks while encouraging the adoption of uniform standards that reduce compliance burdens for small businesses. By incentivizing states to address these barriers, the federal government can help restore competitive balance and ensure that small businesses can operate efficiently in the national marketplace without facing artificial state-imposed disadvantages based solely on geographic considerations.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Rosalyn Steward at (202) 510-9028 or by email at rosalyn.steward@sba.gov.

Sincerely,

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Copy to: Mr. Jeffrey B. Clark, Sr., Acting Administrator
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