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Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Re: Docket No. OLP182; Request for Information on State Laws Having Significant Adverse Effects on the National Economy or Significant Adverse Effects on Interstate Commerce

To whom it may concern:

The National Association of Manufacturers (NAM) stands firmly behind the Trump Administration's efforts to ensure the laws and regulations that govern the national economy are stable and predictable. The success of manufacturing in the U.S. depends on legal and regulatory certainty. Unfortunately, manufacturers remain mired by significant costs, administrative burdens, and the attendant liability risk of trying to navigate and satisfy varying and often conflicting standards across the 50 states.

The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that supports and empowers the 13 million people who make things in America. As the largest manufacturing association in the U.S., the NAM's membership includes businesses of all sizes, across all industrial sectors, and in all 50 states. Manufacturers collectively contribute $2.93 trillion to the U.S. economy—and appropriately uniform laws and regulations are critical to sustaining this sizeable contribution to our nation's prosperity.

The Department of Justice (DOJ) rightly recognizes that the full potential of manufacturing in America is increasingly constrained by a growing patchwork of inconsistent state laws. Without consistent and uniform rules of the road, manufacturers are left to navigate a shifting landscape of mandates that increase costs, compliance risks, and inefficiencies that jeopardize the sector's ability to invest, grow, and lead. Notably, the majority of manufacturers are small and medium-sized companies, which are particularly affected by regulatory burdens—indeed, smaller companies already bear a disproportionate share of the industry's regulatory burden, with federal compliance costs surpassing $50,000 per employee per year for small manufacturers.[1]

In recent years, the NAM has traced a growing volume of state laws and regulations in areas properly, and often expressly, left to the federal government. This has resulted in a patchwork of expansive and often conflicting laws regulating food and beverages, artificial intelligence, pharmaceuticals, greenhouse gas emissions, securities disclosures, and more. Compliance with this patchwork has imposed a massive financial burden on manufacturers throughout the country and complicated manufacturing operations. The NAM supports appropriate federal preemption and the establishment of uniform regulations in these critical areas. The federal government, through its legislative and executive arms, is uniquely suited to balance competing interests, protect the national

[1] The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business, by Nicole V. and W. Mark Crain, October 2023, available at https://nam.org/wp-content/uploads/2023/11/NAM-3731-Crains-Study-R3-V2-FIN.pdf

economy, and prevent any single state from imposing idiosyncratic policy preferences across the country.

Additionally, exploitive state tort lawsuits create an excessive burden to interstate commerce and U.S. manufacturing dominance. For years, the profit-driven plaintiffs' bar has launched litigation campaigns around the country targeting a variety of lawful and beneficial products, many of which are regulated by comprehensive federal statutes. The cost of defending these lawsuits for manufacturers is astronomical, as they often require extensive fact and expert discovery, along with complex motion practice, generating skyrocketing legal fees before even reaching trial. Further, with multiple suits pending across the 50 states, the likelihood of conflicting outcomes and crippling monetary judgments or coercive settlements undermines existing federal regulatory and safety regimes and exposes manufacturers to potentially crushing liability. Quite simply, the defense of tort suits diverts money and resources away from growing the manufacturing sector in the U.S.

In response to the Department's August 15, 2025 request for comments regarding state laws that adversely affect interstate commerce, the NAM submits the following outline of state laws, regulations, and causes of action that have negatively impacted the ability of manufacturers to conduct interstate business in an efficient and effective manner. We urge the Administration to act decisively to establish straightforward, standardized rules of the road that allow manufacturers to invest confidently, adopt new technologies swiftly, and focus resources on productivity and jobs, ensuring America remains a leader in the global economy.

I. Unify Artificial Intelligence Rules to Unlock Manufacturing Innovation Nationwide

Artificial intelligence (AI) has become central to manufacturers' efforts to protect their workers, overhaul their shop floors, manage their supply chains, and innovate groundbreaking products. As such, manufacturers strongly supported the inclusion in the Trump Administration's AI Action Plan of language directing federal agencies to "consider a state's AI regulatory climate when making funding decisions and limit funding if the state's AI regulatory regimes may hinder the effectiveness of that funding or award."[2] Manufacturers recommend that each federal agency give this provision its full effect.

In May 2024, the NAM published "Working Smarter: How Manufacturers Are Using Artificial Intelligence."[3] This report explains how manufacturers use AI in a myriad ways, such as cutting-edge AI tools like AI-powered cameras to enhance worker safety and eliminate product defaults, AI simulations to design new products and optimize shop floor operations, and AI data analytics to control costs and manage supply chains more efficiently. Manufacturers are also embedding AI in new, intelligent products. In short, AI has become integral to modern manufacturing, and manufacturers are at the forefront of developing and implementing AI systems. A recent survey of manufacturing experts and leaders by the Manufacturing Leadership Council, the digital transformation division of the NAM, confirms AI's ever-increasing importance to modern manufacturing: 51% of manufacturers already use AI in their operations, and 80% say it will be essential to growing or maintaining their business by 2030.[4]

As such, manufacturers need a policy and regulatory framework that supports U.S. AI growth, innovation, and leadership—one that streamlines compliance, to enable rather than hinder manufacturers' development and adoption of AI systems. Limiting compliance burdens associated

[2] https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf

[3] https://nam.org/wp-content/uploads/2024/05/NAM-AI-Whitepaper-2024-1.pdf

[4] https://manufacturingleadershipcouncil.com/future-of-manufacturing-project/shaping-the-ai-powered-factory-of-the-future/

with AI-specific policies will particularly ensure that small and medium-sized manufacturers are not left behind as AI continues to transform manufacturing.

To support AI innovation, manufacturers recommend that every effort be made to prevent the emergence of a patchwork of disparate state laws and regulations that would inhibit AI innovation and adoption, either by imposing different requirements for the same activities or by over-regulating the development and deployment of AI rather than focus on specific use-cases and well-identified risks—all of which imposes heavy compliance burdens. That is why manufacturers strongly supported language in the One Big Beautiful Bill Act that would have encouraged states not to enforce their AI laws for 10 years in order to incentivize and protect AI innovation.[5] By one count,[6] almost 700 AI-related bills were introduced at the state level in 2024, up from 200 in 2023. This wave shows no sign of receding in 2025, with bills such as California's AB 1018[7] and New York's S 1169A[8] progressing through their respective legislatures. The NAM respectfully encourages Congress and the Administration to take steps to ensure regulatory certainty and stability at the federal level that will prevent these and similar state-level efforts from blocking American AI dominance.

II. Strong Federal Privacy Standards Are Needed to Protect Consumers and Drive Growth

AI is one of the many groundbreaking technologies that manufacturers use to develop innovative products and transform the manufacturing process. Personal data continues to be a critical input into and byproduct of these evolutions. Additionally, manufacturers are entrusted with vast amounts of personal data through their comprehensive and connected relationships with consumers, customers, and suppliers. As such, manufacturers recognize their critical responsibility to safeguard privacy.

Unfortunately, the increase in the number of states that have passed comprehensive privacy laws continues. The International Association of Privacy Professionals reports that the pace of one or two such laws passed each year between 2018 and 2022 jumped to seven per year in both 2023 and 2024, that the "variety of legislative approaches has thrown the state legislative landscape into flux," and that 19 states have passed comprehensive privacy laws.[9] This produces compliance difficulties and costs that are difficult to bear, in particular for small and medium-sized manufacturers.

Manufacturers have thus advocated for years that a fully preemptive and comprehensive national privacy law that avoids frivolous litigation would make a major contribution to protecting consumers' privacy rights, and boosting consumer confidence, while facilitating the development of innovative products and the transition to modern manufacturing. The NAM calls on the Administration to work with Congress to develop such legislation and send it to the President's desk without delay.

III. Curb Abusive Tort Campaigns That Undermine Federal Regulation and Safety Standards and Stifle Innovation

According to the most recently available data, tort costs in the United States in 2022 "amounted to $529 billion, or 2.1 percent of U.S. gross domestic product."[10] This eyepopping price tag balloons

[5] https://documents.nam.org/tech/NAM%20support%20Senate%20reconciliation%20AI%20-%20FINAL.pdf

[6] https://techpost.bsa.org/2024/10/22/2024-state-summary-on-ai/

[7] https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=202520260AB1018

[8] https://www.nysenate.gov/legislation/bills/2025/S1169/amendment/A

[9] https://iapp.org/media/pdf/resource_center/us_state_privacy_laws_report_2024_session_overview.pdf

[10] U.S. Chamber of Commerce Institute for Legal Reform, *Tort Costs in America, Third Edition: An Empirical Analysis of Costs and Compensation of the U.S. Tort System*, November 2024.

even further when the indirect effects of litigation are considered. Industry-wide litigation campaigns slow innovation by discouraging the development and sale of new products and restricting where businesses choose to locate or conduct business.[11]

The volume of state law-based tort litigation in the U.S. is distorted by third-party litigation funding, the growing practice of outside entities using our nation's courts as an investment mechanism. Litigation financiers secretly invest billions of dollars in speculative litigation to profit from disputes they help generate. One estimate put the size of the U.S. litigation funding market at $13.5 billion, with an additional $3.2 billion in new investments in 2022 alone.[12] In the mass tort context, these funds are used to pay for television commercials, social media ads, and call centers, enabling plaintiffs' lawyers to generate thousands of dubious lawsuits against manufacturers that are consolidated in federal multi-district litigations or state equivalents where most cases will never be scrutinized. Although some states have stepped in to enact common sense limitations on TPLF,[13] the practice remains stubbornly unregulated at the federal level.[14]

Defending against tort litigation is a costly courtroom exercise that drains critical funds from efforts to stimulate the national economy, create jobs for U.S. workers, and promote American dominance across all industry sectors. In particular, tort lawsuits leveraging vague state public nuisance doctrines and consumer protection statutes have imposed a heavy cost on manufacturers in the U.S. Further, failure-to-warn and design defect claims second guess the safety of products that have undergone rigorous review and approval processes established by federal law, undermining those regimes.

Public Nuisance & Consumer Protection Theories

One particularly problematic state tort law trend is the novel use of the public nuisance doctrine and consumer protection statutes to sue manufacturers, distributors, and sellers of products with downstream risks like oil and gas, household chemicals, or prescription drugs. These suits try to force the companies into funding private and public efforts to deal with those risks, circumventing traditional product liability causes of action.

Historically, the public nuisance doctrine was a narrowly defined tool intended to resolve local disturbances that interfere with the right of the public to use public property, including public roads, communal spaces, and local waterways. In turn, state consumer protection statutes enable state attorneys general or private individuals to stop practices that mislead consumers into purchasing products that are different from or less valuable than promised, and to compensate those who have lost money as a result. The plaintiffs' bar has aggressively sought to transform both public nuisance and consumer protection claims into tools to require large businesses, rather than individual wrongdoers or taxpayers, to remediate environmental damage or pay costs of social harms associated with categories of products.

The climate change litigation campaign is a salient example of how public nuisance and consumer protection have been exploited to the detriment of American industry. In pursuit of climate change reform, states and municipalities have filed dozens of lawsuits against energy manufacturers, improperly framing social, political, and environmental public policy matters as state law public

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[11] *Id.*

[12] Westfleet Advisors, *The Westfleet Insider, 2022 Litigation Finance Market Report,* 2022.

[13] *See, e.g.*, S.B. 69, 105th Gen. Assemb., Reg. Sess. (Ga. 2025); S.B. 1215, 57th Leg., 1st Reg. Sess. (Az. 2025); S.B. 54, 2025 Reg. Sess. (Kan. 2025).

[14] *See* Letter from Erica Klenicki, Deputy General Counsel, Litigation, National Association of Manufacturers, to Committee on the Judiciary, Subcommittee of Courts Intellectual Property and the Internet (June 12, 2024). https://documents.nam.org/law/NAMLtr_to_HouseJudiciary_TPLF_061224.pdf

nuisance and consumer protection claims. In lodging these claims, states seek to bypass the federal legislative and regulatory processes by placing public policy issues into the hands of state courts. This has resulted in the filing of 35 lawsuits in 18 different states, the District of Columbia, and Puerto Rico since 2017.

Oil and gas companies have been the primary targets of these lawsuits, draining resources and funding from a vital sector of the American economy.[15] Advocates of this litigation campaign have openly acknowledged that their desired effect is to impose the costs of global production, promotion, sale, and use of fossil fuels on energy manufacturers[16]—a clear perversion of the public nuisance doctrine and consumer protection statutes.

The NAM fully supports national efforts to address climate change through appropriate federal laws and regulations. Indeed, the U.S. Supreme Court has recognized that climate change lawsuits require "federal law governance," presenting issues of "special federal interest."[17] Imposing state liability over the production, promotion, and sale of lawful, beneficial energy products is not the appropriate method of deciding these critical federal public policy issues.

The energy industry is not alone. Other lawful and beneficial industries have become targets in similar litigation campaigns, including plastics,[18] automobiles,[19] pharmaceuticals,[20] and more. By diverting critical resources away from sustained growth and job creation, these relentless litigation campaigns pose a threat to our national prosperity and hinder U.S. manufacturing dominance.

Design Defect & Failure-to-Warn Suits

State-law based design defect and failure-to-warn lawsuits claiming that products are unsafe due to alleged deficiencies in their federally approved designs and warning labels are another significant burden on manufacturers and interstate commerce. In these cases, the trial bar leverages sympathetic plaintiffs to second-guess the safety of products with foreseeable risks or inherent externalities. For the lawyers bringing these claims, it is a lucrative business model, yielding eyepopping million-dollar or even billion-dollar verdicts.[21] These lawsuits put manufacturers in an impossible situation, generating state labeling requirements that conflict with federal standards and exposing companies to massive liability for inevitably failing to comply with both.

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[15] *See City of Annapolis. v. BP P.L.C., et al.,* Supreme Court of Maryland (filed February 22, 2021); *Beyond Pesticides v. Exxon Mobil Corp*., Superior Court for the District of Columbia (filed May 15, 2020); *City and County of Honolulu v. Sunoco LP et al*., First Circuit Court of O'ahu, Hawaii (filed March 9, 2020); *Minnesota v. American Petroleum Institute et al*., District Court of Ramsey County, Minnesota (filed June 24, 2020).

[16] *See* Jerry Taylor & David Bookbinder, *Oil Companies Should be Held Accountable for Climate Change*, Niskanen Ctr., Apr. 17, 2018. *See also* Kirk Herbertson, *Oil Companies vs. Citizens: The Battle Begins Over Who Will Pay Climate Costs*, EarthRights Int'l, Mar. 21, 2018.

[17] *American Electric Power Co. v. Connecticut*, 564 U.S. 410, 422, 424 (2011).

[18] *See Nestle USA, Inc. et al. v. Superior Court of San Mateo County, et al*., California Court of Appeals, First Appellate District (filed September 9, 2024).

[19] *See Fenner et al. v. General Motors Corp. et al*., U.S. Court of Appeals for the Sixth Circuit (decided August 21, 2024).

[20] *See Gilead Sciences., Inc. v. Superior Court of the City and County of San Francisco*, California Court of Appeals, First Appellate District (decided January 9, 2024).

[21] *See, e.g.*, *See Barnes v. Monsanto Company*, Superior Court of Cobb County, Georgia (decided March 23, 2025) (awarding a $2.1 billion verdict).

The pharmaceutical, medical device, and crop protection industries have been especially plagued by these lawsuits, undermining comprehensive federal regulatory regimes.[22] For example, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) serves as the exclusive law governing the requirements for federally approved pesticide labels; FIFRA contains an express preemption provision prohibiting states from imposing labeling requirements "in addition to or different from" those outlined in the statute.[23] However, plaintiffs' attorneys continue to sue pesticide manufacturers under state law failure-to-warn theories and have collected massive recoveries in the process. As of September 2025, Monsanto Co. and its parent company, Bayer AG, have paid nearly $11 billion in settlements and faced over $6 billion in jury verdicts in nationwide failure-to-warn litigation over its federally approved product label.[24]

Likewise, while the Federal Food, Drug, and Cosmetic Act (FFDCA) has a similar preemption provision covering the design and approval of medical devices,[25] plaintiffs' lawyers remain undeterred and continue to file design defect and failure-to-warn suits against the life sciences industry.[26]

The U.S. Supreme Court has recognized the importance of adhering to the uniform regulations set forth by these federal regimes to prevent a "crazy quilt" of conflicting state labeling requirements that will impose massive liability on manufacturers for adhering to federal law.[27] Manufacturers depend on stable, predictable, and nationally uniform labeling and design requirements.

Consent-by-Registration Statutes

Manufacturers are routinely sued in plaintiff-friendly jurisdictions with little or no connection to the lawsuits—a trend greatly exacerbated by overreaching consent-by-registration statutes. Pennsylvania's consent-by-registration statute provides that when an out-of-state company registers to do business in the state, the company is subject to general jurisdiction there, regardless of whether the company is *actually* doing business there, let alone has such extensive instate contacts that Pennsylvania is a state in which it is "at home."[28] In other words, Pennsylvania can force itself into a dispute when neither the case nor defendant has the requisite connection to the state. This statute, and others like it out of Georgia and Illinois,[29] encourage rampant forum shopping by plaintiffs and run afoul of the Commerce Clause and core principles of federalism which demand that

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[22] *See, e.g.*, *Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996); *Altria Grp., Inc v. Good*, 555 U.S. 70 (2008); *Bates v. Dow Agrosciences, LLC* 544 U.S. 431 (2005); *Hardeman v. Monsanto Co.*, 142 S. Ct. 2903 (2022); *Johnson v. Monsanto Co.*, 90 F.4d 367 (9th Cir. 2024).

[23] 7 U.S.C. § 136v(b).

[24] *See* Ricky LeBlanc, *Roundup Litigation Update 2025*, Sokolove Law LLC, Sept. 2, 2025. https://www.sokolovelaw.com/product-liability/monsanto-roundup/lawsuit-updates/ (accessed Sept. 3, 2025).

[25] 21 U.S.C. §§ 360k(a), 337(a).

[26] *See, e.g.*, *Gilead Sciences., Inc. v. Superior Court of the City and County of San Francisco,* California Court of Appeals, First Appellate District (decided January 9, 2024)); *Russell v. Boehringer Ingelheim Pharmaceuticals, Inc. et al*, Superior Court of Alameda County, California (decided November 21, 2024)); *In re. Actos (Pioglitazone) Products Liability Litigation,* Western District of Louisiana (filed July 30, 2012).

[27] *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 448 (2005).

[28] *See* Pa. Const. Stat. § 5301(a).

[29] O.C.G.A. § 9-10-91 provides that a nonresident corporation is subject to the personal jurisdiction of Georgia courts in the same manner that a Georgia resident would be if the out-of-state corporation "transacts any business within" the state of Georgia. And just last month, Illinois Governor J.B. Pritzker signed into law Senate Bill 328, which similarly allows out-of-state businesses to be sued by out-of-state plaintiffs in Illinois courts for alleged injuries with no connection to the state.

a state exercise general jurisdiction over a business only where the business is "at home," which in all but the rarest of circumstances is its place of incorporation or principal place of business.[30]

IV. State-Level Attacks on the Food and Beverage Supply Chain Undermine Science, Consumer Trust, and Regulatory Certainty

State-level food ingredient bans and labeling mandates are proliferating at an unprecedented rate, creating a fragmented regulatory landscape across the country. While the Food and Drug Administration (FDA) has long exercised federal authority over food safety, ingredient use, and labeling requirements under the Federal Food, Drug, and Cosmetic Act, a growing number of states are enacting restrictions or disclosure obligations that deviate from or exceed federal standards. These measures are not harmonized across jurisdictions, resulting in a rapidly expanding patchwork of inconsistent rules governing which ingredients may be used in food products and how such products must be labeled. The lack of uniformity has escalated uncertainty for food manufacturers, distributors, and retailers, while also raising the potential for consumer confusion.

This patchwork imposes substantial economic and operational burdens on food and beverage manufacturers and their supply chains and, by extension, on the consumers they serve. Companies are forced to reformulate products, redesign packaging, and restructure supply chains on a state-by-state basis, a costly and often logistically impracticable exercise. Such inefficiencies undermine economies of scale and restrict consumer access to safe, FDA-reviewed products. Moreover, consumers face inconsistent information about product content and safety depending on where they reside, undercutting the reliability of labeling as a trusted tool. The result is a fractured national marketplace that undermines both interstate commerce and consumer confidence in the food regulatory system.

To address these challenges, federal preemption must be established to ensure uniform, nationwide standards governing food ingredient safety and labeling. Congress and federal regulators should reaffirm FDA's exclusive authority in these areas, preventing states from imposing conflicting bans or labeling requirements that disrupt interstate commerce. A consistent federal framework will preserve FDA's science-based oversight, provide industry with regulatory certainty, and ensure consumers across the country have access to safe, affordable, and clearly labeled food products. Accordingly, the Department of Justice should recognize these state laws as having "significant adverse effects on interstate commerce" under the terms of this Request for Information and support the need for federal preemption in this area.

V. California's Excessive Regulations Threaten America's Manufacturing Edge

California's immense manufacturing base and powerful consumer market should provide opportunities for further manufacturing growth, but instead its regulatory agenda often creates significant challenges. Because California is the largest state economy, manufacturers are forced to comply with restrictive state-level laws and regulations in addition to existing federal standards. This unnecessary duplication only drives up costs and creates confusion. Additionally, California regulations often become a model for other states, expanding compliance burdens and increasing the patchwork of uncertainty. These attempts to override federal preemption threaten to undermine national competitiveness.

[30] See *Daimler AG v. Bauman*, 571 U.S. 117 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).

Climate Disclosure Laws

For example, California has adopted a series of climate disclosure laws that will impede interstate commerce and impose significant reporting burdens on thousands of public and private companies that are headquartered outside the state. These laws include the Climate Corporate Data Accountability Act (SB 253), which will require U.S.-based companies "doing business in California," and with total annual revenues exceeding $1 billion, to provide annual disclosure of their Scope 1 and 2 greenhouse gas (GHG) emissions starting in 2026, with Scope 3 reporting commencing in 2027. Compliance with this Scope 3 mandate, which requires companies to use unproven methodologies to estimate emissions from up- and down-stream in their supply chains, will be extremely burdensome, especially for smaller manufacturers.[31] Companies also will be required to retain audit firms to provide assurance to verify their emissions reporting, which will further add to compliance costs. Additionally, the Climate Related Financial Risk Disclosure Act (SB 261) requires biennial climate risk reporting by companies doing business in California with total annual revenues exceeding $500 million. The first reports under that law are due on January 1, 2026. While the state is still refining its definition of "doing business in California," state regulators have estimated that 2,596 U.S. companies would be subject to emissions reporting while 4,160 entities would have to submit biennial climate risk reports.[32]

The state has moved to implement these duplicative disclosure laws even though the Securities and Exchange Commission extensively regulates public company disclosures. Indeed, federal preemption is foundational to federal securities law, as Congress was clear in the Securities Exchange Act that uniform corporate disclosures, promulgated and enforced by the SEC, were in the best interests of capital formation, investor protection, and efficient capital markets here in the U.S. Furthermore, the SEC already adopted a comprehensive climate disclosure rule in March 2024; though the rule is now facing a court challenge, the federal government's regulation of corporate disclosures is so comprehensive that there is no room for supplemental state laws.

Hydrofluorocarbon (HFC) Prohibitions

California has also adopted hydrofluorocarbon (HFC) prohibitions that go beyond those mandated under the federal American Innovation and Manufacturing (AIM) Act, creating divergent requirements for manufacturers and users of refrigerants. While the AIM Act sets national phasedown targets consistent with the Kigali Amendment, California has imposed accelerated prohibitions beyond the AIM Act's phasedown schedule. These accelerated timelines and stricter prohibitions force manufacturers operating nationwide to design and distribute separate product lines to satisfy California's unique standards. The divergence increases costs, disrupts supply chains, and undermines the uniformity Congress intended when adopting a nationwide HFC phasedown.

Proposition 65

Also in California, the Proposition 65 Warnings (Prop 65) law requires businesses to provide warnings before exposing consumers to chemicals known to the state to cause cancer or reproductive harm, many of which are not classified as hazardous under OSHA's Hazardous Communication Standard. This results in products carrying warning labels in California that are not required elsewhere in the United States.

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[31] By definition, Scope 3 emissions are outside a company's control and it will be extremely difficult to gather downstream information on how a customer may use its products, while other companies will have great difficulty determining the upstream emissions attributable to commodity production.

[32] Sullivan & Cromwell, Memo: "California Air Resources Board Second Public Workshop on Climate Reporting Under SB 253 and SB 261," (22 August 2025), *available at* https://www.sullcrom.com/insights/memo/2025/August/California-Air-Resources-Board-Second-Public-Workshop-Climate-Reporting-SB-253-SB-261.

Inconsistency between Prop 65 and OSHA's Hazardous Communication Standard generates confusion for consumers and significant compliance burdens for manufacturers and retailers. The result is a costly, duplicative framework that hampers interstate commerce and highlights the need for greater alignment between state labeling requirements and federal hazard communication standards.

VI. EPA, Not States, Must Lead on PFAS to Ensure Certainty for Manufacturers

States are moving aggressively to regulate products containing per- and polyfluoroalkyl substance (PFAS), creating a patchwork of bans and complex exemption processes that are complicating compliance for manufacturers operating nationally. Maine (LD 1503), Minnesota (Amara's Law), and New Mexico (HB 212) have enacted broad prohibitions on the sale of products with intentionally added PFAS, with varying definitions and scope. The practical effect of this state patchwork is that manufacturers are forced to navigate different timelines, exemptions, and agency determinations.

In addition to bans, states are imposing detailed reporting obligations that require manufacturers to disclose PFAS use in products. States like Maine and Minnesota have developed reporting programs, while others are phasing in requirements and comprehensive reporting is anticipated in the coming years. These requirements extend well beyond traditional chemical reporting frameworks, requiring companies to submit product-level data that differs by state. The result is a system where companies not only face outright prohibitions but also must invest heavily in compliance systems to track, document, and report PFAS use across complex supply chains.

The combination of bans differing in scope, inconsistent definitions and exemptions, and reporting obligations creates a patchwork regulatory landscape that complicates national distribution and raises compliance costs. Divergent timelines and evolving agency determinations around unavoidable uses also impede long term planning and investments. The lack of consistency in state PFAS regulations underscores the need for a harmonized federal approach.

VII. Protect Federal Clean Air Authority from Burdensome State Emissions and Climate Superfund Mandates

In recent years, certain states have taken extraordinary actions to target manufacturers that operate in the oil and gas space. Under new laws in New York and Vermont, certain fossil fuel companies that operate within these states must pay into a state climate "superfund" to mitigate the effects of greenhouse gas emissions that are attributed to them. The states contend that the funds collected from these companies will go towards the funding of climate-related infrastructure projects and other climate programs.

These state laws are purportedly modeled after the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which is a federal statute that created a tax on the chemical and petroleum industries and provided broad federal authority to respond to releases or threatened releases of hazardous substances that may endanger public health or the environment. However, the CERCLA framework that applies to localized releases does not apply to greenhouse gases that are emitted from numerous sources globally and become well-mixed in the atmosphere.

Manufacturers are committed to reducing global carbon emissions and being good stewards of the environment within the communities that they operate. However, the Clean Air Act maintains that the federal government has preemption over the states when it comes to controlling and regulating greenhouse gas emissions.

VIII. Manufacturers Need Clear, Workable Federal Energy Efficiency Standards

Under the Energy Policy and Conservation Act (EPCA) and subsequent statutes, the federal government is tasked with setting certain test procedures, labeling, and energy targets for consumer products and appliances. The Department of Energy has preemptive authority to set minimum efficiency standards and can undertake reviews to enact new or updated standards. This federal preemption is essential for the maintenance of a national marketplace for products. Under EPCA, the DOE can grant waivers to its preemptive authority if a state can demonstrate an unusual and compelling energy interest and it will not significantly burden the national market.

Should the current administration surrender their preemptive authority to establish energy efficiency standards, states may petition a future administration for a waiver or seek other means to fill the void and establish their own standards for production, packaging, shipping, handling, and disposal. Manufacturers would face increased costs and stifled innovation if they must comply with a fifty-state patchwork of efficiency standards.

Federal policies should provide a reliable investment environment for businesses of all kinds and sizes to pursue energy management technologies, practices, and services. The executive branch should be increasing its collaboration with industry to ensure efficiency standards are workable and sensible. The NAM asks that the administration maintain its ability to set energy efficiency standards and preempt attempts by the states to usurp this authority.

IX. Fragmented EPR and Labeling Laws Burden Manufacturers and Confuse Consumers

States are moving quickly to adopt extended producer responsibility (EPR) laws and other legislation related to recycling to shift the cost and responsibility for end-of-life management of packaging and other products to producers. The lack of uniformity across state EPR, recycled content, and labeling laws has created a patchwork of requirements

California (SB 54), Colorado (HB 22-1355), Oregon (SB 582), Maine (LD 1541), Minnesota (HF 3911), Maryland (SB 222), and Washington (SB 5284) have already enacted EPR laws covering packaging, each with different timelines, recycling targets, and compliance structures. Manufacturers must navigate producer responsibility organizations, adapt to varying fee schedules, manage overlapping compliance deadlines, and reconcile inconsistent covered product lists and differing recycled content requirements to make decisions on a national scale.

Additionally, California's Truth in Labeling for Recyclable Materials Act (SB 343) will restrict the use of the "chasing arrows" recycling symbol beginning in October 2026, limiting its use to packaging that meets the 60% recycling rate in the state. While intended to reduce consumer confusion, the law creates significant challenges for manufacturers selling into California, requiring packaging and labeling redesigns even where products are lawfully marketed as recyclable elsewhere in the United States. This divergence imposes additional costs and raises the risk of inconsistent consumer messaging and regulatory compliance across state lines. Thirty states still require the label in some manner.

The implications extend beyond packaging to product recyclability, which increases the implementation challenges for global industries such as electronics, where labeling is standardized to comply with international requirements for e-waste and battery recycling. A laptop box, for example, carries labeling required in Asia, North America, and Europe. Products carry a variety of international labels, such as the crossed out wheely bin required by the EU Waste of Electrical and

Electronic Equipment directive,[33] which are at risk of being illegal within the state. California's labeling mandates are uniquely tailored to the state force manufactures to create separate supply chains and packaging runs exclusively for California, creating an unworkable approach for industries that rely on uniform global distribution. The result is a fragmented compliance framework that disrupts interstate and international commerce. For manufactures operating nationwide, the divergence of EPR and labeling laws generates significant administrative and financial burdens ultimately undermining efficient product distribution.

X. State-Level Attempts to Impose Antitrust Standards Stifle Growth and Hurt Good Actors

Pre-Merger Notification

Over the past year, two states have enacted antitrust laws that mimic the federal Hart-Scott-Rodino (HSR) pre-merger notification law. In July 2024, the Uniform Law Commission released the model Uniform Antitrust Premerger Notification Act, which was the basis for the new laws in Colorado and Washington that require companies that have their principal place of business or have more than 20% of their net sales in the state to share their federal HSR filings with the state attorney general. At least five other states are considering similar laws. While some have previously scrutinized mergers in certain sectors, such as hospitals and other health care providers in their state, it appears that additional states are seeking to review and potentially challenge mergers in other industry sectors.

Additionally, California and New York may go beyond the model notification laws and are considering lowering the threshold for states to challenge mergers. A California commission has recommended that the state adopt legislation to allow the state attorney general to challenge mergers presenting an "appreciable risk of harm," a lower standard than the federal Clayton Act's "substantially lessen competition" standard. If states start challenging beneficial transactions that the Federal Trade Commission or the Department of Justice has approved, this state overreach would chill M&A activity outside those states and interfere with interstate commerce.

Indirect Liability

Conflicting state and federal rules conferring legal standing to different classes of antitrust plaintiffs generate duplicative lawsuits around the country.[34] Federal law prohibits indirect purchasers from bringing antitrust claims in court, but many state laws permit indirect purchasers to bring these claims alongside direct purchasers. This disjointed system often rewards uninjured parties, denies recovery to those actually harmed, and forces manufacturers into costly settlements regardless of the merits of any case. To rectify these problems, the DOJ should work with Congress to craft modern, uniform federal antitrust standards that preempt conflicting state laws and create a level playing field for antitrust defendants across jurisdictions.

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[33] https://europa.eu/youreurope/business/product-requirements/labels-markings/weee-label/index_en.htm

[34] In *Illinois Brick v. State of Illinois*, 431 U.S. 720 (1977), the Supreme Court held that indirect purchasers do not have standing to sue for damages under federal antitrust laws. Defendants in these cases are further prevented from arguing that direct purchasers have "passed on" any amount of overcharge to indirect purchasers. See *Hanover Shoe, Inc. v. United Shoe Machinery Corp*., 392 U.S. 481, 494 (1968). In the years since *Illinois Brick,* thirty states and the District of Columbia have passed laws allowing consumers at all stages of the supply chain—including indirect purchasers—to bring legal actions under state antitrust laws (known as *Illinois Brick* repealer statutes.) See Michael A. Lindsay, Overview of State RPM, The Antitrust Source, https://www.dorsey.com/-/media/files/newsresources/publications/2017/apr17_lindsay_chart.pdf?la=en (Apr. 2017).

XI. State Intrusion into NLRB Jurisdiction Jeopardizes Labor Relations

The National Labor Relations Board has preemptive authority over those labor activities subject to sections 7 and 8 of the National Labor Relations Act.35 Several states are attempting to intrude on this area of federal jurisdiction through recent legislative efforts, in contravention of longstanding and clear precedent governing industrial relations nationwide.36 Such efforts threaten to upend labor relations, to the detriment of productive employer-employee relations and manufacturing competitiveness. Recently, the NLRB announced its intent to challenge New York laws that infringe on the agency's authority. Manufacturers appreciate the Administration's efforts to preserve productive employer-employee relationships nationwide.

XII. Divergent Independent Contractor Rules Increase Workforce Challenges in Manufacturing

Several states have adopted or are attempting to adopt strict tests for worker classification as an employee of a potential employer or an independent contractor.[37] As with the previous administration's 2024 rule, which the Trump administration's Department of Labor is rightly reconsidering, these state efforts threaten to exacerbate workforce challenges faced by manufacturers and impinge on the economic freedom of those independent contractors who work within our industry. Manufacturers urge the administration to monitor state classification standards and continue its efforts to reconsider the 2024 federal rule.

XIII. Right to Repair Patchwork Harms Innovation and Threatens Safety

Both industrial and consumer equipment has become increasingly sophisticated, relying on complex software and specialized components that provide innovative and enhanced functions while also meeting stringent federal operational requirements. So-called "right to repair" policies seek to force manufacturers to provide unfettered access to embedded software and to release proprietary diagnostics and repair information outside of established channels. Such mandates undermine compliance with federal safety, environmental, and performance requirements; weaken intellectual property protections and erode incentives for innovation; compromise data security; and expose users to cybersecurity vulnerabilities. Far from strengthening the marketplace, broad right to repair measures threaten to impose long-term costs on consumers, manufacturers, and the broader economy.

A growing number of state right to repair laws are creating a fragmented and inconsistent regulatory environment. The result is an unpredictable marketplace that raises costs, reduces clarity, and risks slowing investment in new technologies that enhance safety, cybersecurity, and sustainability. Importantly, manufacturers have shown a willingness to collaborate on repairability in ways that meet consumer needs without jeopardizing intellectual property, product safety, or liability frameworks. Voluntary agreements, such as memorandums of understanding developed in sectors like automotive and agricultural equipment, demonstrate that industry and stakeholders can reach practical solutions that expand repair options while maintaining essential safeguards. The success of

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[35] *See San Diego Building Trades Council v. Garmon*, 79 S. Ct. 773 (1959). Available at https://tile.loc.gov/storage-services/service/ll/usrep/usrep359/usrep359236/usrep359236.pdf.

[36] Chris Marr. *NLRB's Top Lawyer Plans to Sue New York Over State Labor Law (2).* (Bloomberg Law, Sept. 11, 2025). Available at https://news.bloomberglaw.com/daily-labor-report/nlrbs-top-lawyer-plans-to-sue-new-york-over-state-labor-law.

[37] https://newjerseymonitor.com/2025/08/04/broad-opposition-meets-nj-push-to-change-rules-on-independent-contractors/

these proactive memorandums of understanding obviates the need for state right to repair policies and underscores the unnecessary and burdensome nature of this developing patchwork of laws.

XIV. Protect Federal ERISA Preemption to Keep Employer-Sponsored Health Care Affordable for Manufacturers and Employees

Employer-sponsored health insurance (ESI) is the bedrock of the United States' health care system, and the Employee Retirement Income Security Act of 1974 (ERISA) is the foundation ESI is built upon. ESI covered 154 million people in 2024, 63% of whom were enrolled in self-funded plans governed by ERISA.[38]

Manufacturers have a deep commitment to providing health benefits to their workers, even as rising health care costs remain a top challenge for the industry. Sixty percent of manufacturers, and 67% of small manufacturers, cited health care costs as their primary concern in the NAM's most recent Manufacturers' Outlook Survey.[39] Despite this challenge, 93% of manufacturing workers are eligible for health insurance benefits.[40] In 2023, the NAM released a study, *Manufacturers on the Front Lines of Communities: A Deep Commitment to Health Care*, which took an in-depth look at the progress made by manufacturers in offering ESI, as well as the challenges they continue to face.[41] The study found that ESI helps manufacturers effectively attract talent, retain employees, and maintain a healthy and productive workforce. Manufacturers are committed to continuing to offer health insurance to their employees, even in the face of rising costs.

ERISA's federal preemption of state and local laws and regulations is essential to the operation of ESI. Federal preemption is foundational to ERISA, as it allows multi-state employers to design and administer uniform benefits to all employees, regardless of the state in which they live. Eroding or eliminating preemption would make it significantly more difficult for manufacturers operating in multiple states to offer health insurance to their employees because the employer would be forced to comply with cumbersome and potentially conflicting state-based rules, a costly and untenable situation.

Subjecting ERISA plans to state regulation would also reduce the flexibility employers currently have to tailor health benefits to their workforce, a feature that has made ESI popular and effective for employees. ERISA's flexibility has allowed manufacturers to drive innovation in benefit and plan design, improve the quality of care, and experiment with cost controls. For example, many manufacturers make care more accessible by offering on-site clinics, and more affordable by offering plans with low or no out-of-pocket costs for primary and preventive care.

Manufacturers are also experimenting with lowering costs and improving quality through options such as direct contracting and centers of excellence. These innovations are possible because preemption frees self-funded employer plans from many costly and overly prescriptive plan design and benefit mandates at the state level.

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[38] https://www.kff.org/health-costs/2024-employer-health-benefits-survey/#3f3fc2dd-74dd-4cb6-9d1c-9c19ff972f6a

[39] National Association of Manufacturers, Q2 2025 Manufacturers' Outlook Survey (May 30, 2025). Available at https://nam.org/2025-second-quarter-manufacturers-outlook-survey/.

[40] Kaiser Family Foundation, *2024 Employer Health Benefits Survey* (Oct. 9, 2024). Available at https://files.kff.org/attachment/Employer-Health-Benefits-Survey-2024-Annual-Survey.pdf

[41] National Association of Manufacturers, *Manufacturers on the Front Lines of Communities: A Deep Commitment to Health Care* (July 2023). Available at https://documents.nam.org/IIHRP/2023%20Health%20Care%20Reportsingles.pdf.

ERISA preemption is set forth in the original statute and underscored by decades of judicial precedent.[42] ERISA statute instructs that federal regulation of employee benefit plans "shall supersede any and all State laws insofar as they relate to" ERISA-covered plans.[43] Congress recognized that if administering a benefits plan was too burdensome, complicated, or expensive, or if it opened employers up to unacceptable litigation risk, many employers would simply choose not to offer benefits to their employees.[44] Congress recognized, too, that if employers had to comply with specific benefits laws in every state in which they operate, the administrative headache and associated costs could prompt employers to offer less generous benefits.[45]

Any destabilizing or dismantling of the federal preemption framework would seriously hinder the ability of manufacturers to offer and administer uniform, affordable, and accessible benefits to manufacturing employees and their families.

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The NAM appreciates the Department's consideration of these comments. America's manufacturing strength depends on clear, consistent, and uniform federal rules. A patchwork of conflicting state laws creates uncertainty that drives up costs and undermines growth. Manufacturers look forward to working with the Administration, and Congress where appropriate, to protect and establish straightforward, standardized regulations that reduce burdens, promote growth and innovation, and help unlock the full potential of manufacturing in America.

Sincerely,

Charles Crain
Managing Vice President, Policy

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[42] *See Rutledge v. Pharm. Care Mgmt. Ass'n,* 592 U.S. 80, 86-7 (2020) (ERISA is "primarily concerned with preempting laws that require providers to structure benefit plans in particular ways," thus "ensuring that plans do not have to tailor substantive benefits to the particularities of multiple jurisdictions"); *Sherfel v. Newson*, 768 F.3d 561, 568 (6th Cir. 2014) (state laws that "interfere[] with nationally uniform plan administration upset[] the careful balance struck by ERISA's comprehensive and exclusive civil-enforcement remedy, and arrogates to [the state] the power to regulate ERISA benefit plans, which Congress intended to be exclusively a federal concern.") (quotations omitted and cleaned up); *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 510 U.S. 86, 99 (1993) (For this reason too, the Tennessee Law "stands as an obstacle to the accomplishment of the full purposes and objectives of Congress" in enacting ERISA.) (citations and quotation marks omitted).

[43] 29 U.S.C. § 1144(a)

[44] *Conkright v. Frommert*, 559 U.S. 506, 517 (2010).

[45] *See, e.g.*, *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 321 (2016); *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 149-50 (2001); *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1990).