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

June 20, 2025

VIA ELECTRONIC SUBMISSION

The Honorable Abigail Slater
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

The Honorable Andrew N. Ferguson
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Comments on Department of Justice's (DOJ) Request for Information to Anti-Competitive Regulations Task Force; Targeting Red Tape that Hinders Free Market Competition [Docket No. ATR-2025-0001]

Re: Comments on the Federal Trade Commission's (FTC) Request for Information Regarding Reducing Anti-Competitive Regulatory Barriers

Dear Assistant Attorney General Slater and Chair Ferguson:

On March 27, 2025, the U.S. Department of Justice (DOJ) launched an Anti-Competitive Regulations Task Force and published a request for information (RFI), inviting public comments to identify laws and regulations that raise barriers to competition.[1] On April 9, 2025, the Federal Trade Commission (FTC) published a similar request for information (RFI) inviting the public to comment on how federal regulations can harm competition in the American economy.[2]

[1] U.S. Dep't of Just., *Justice Department Launches Anticompetitive Regulations Task Force* (Mar. 27, 2025), https://www.justice.gov/opa/pr/justice-department-launches-anticompetitive-regulations-task-force; *Anticompetitive Regulations Task Force*, REGULATIONS.GOV, https://www.regulations.gov/docket/ATR-2025-0001 (last accessed May 23, 2025).
[2] Fed. Trade Comm'n., *FTC Launches Public Inquiry into Anti-Competitive Regulations* (Apr. 14, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/04/ftc-launches-public-inquiry-anti-competitive-

Congress has long held, evidenced across multiple statutes, that small businesses deserve special consideration in the regulatory process.[3] That remains true when agencies are identifying and reforming regulations that adversely affect competition. Since small businesses are vital to competitive markets and the Office of Advocacy (Advocacy) serves as the voice of small businesses in the federal government, Advocacy submits the following comments in response to the RFIs. Advocacy held a small business roundtable on April 30, 2025, to seek feedback on laws and rules that make it difficult for small entities to operate, create a barrier to entry, and undermine free market competition. The sections that follow present responses received from that process.

I. Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small businesses and other small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy come from input received from outreach to small businesses and do not necessarily reflect the views of the SBA or the Administration. Part of Advocacy's role under the Regulatory Flexibility Act (RFA) is to assist agencies in understanding how regulations may impact small businesses, and to ensure that the voices of small businesses are heard within the regulatory process.[4] Congress crafted the RFA to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws.[5] In addition, the RFA's purpose is to address the adverse effect that "differences in the scale and resources of regulated entities" has had on competition in the marketplace.[6] Advocacy is submitting this comment letter to fulfill its Congressional mandate to advance the views and concerns of small businesses to federal agencies regarding anti-competitive regulations.

II. Background

Small businesses play a crucial role in competition, driving economic growth and innovation. Two-thirds of net new jobs are created by small businesses.[7] Over 98% of high-tech firms are small businesses.[8] U.S. small businesses help to make the American economy one of the most competitive in the world. Advocacy's founding mandate given by Congress in 1976 in Public Law 94-305 is to "examine the role of small business in the American economy and the contribution which small business can make in improving competition, . . . stimulating innovation and entrepreneurship, and providing an avenue through which new and untested products and services can be brought to the marketplace." Advocacy's work to advocate for

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regulations; *Request for Public Comment Regarding Reducing Anti-Competitive Regulatory Barriers*, REGULATIONS.GOV, https://www.regulations.gov/document/FTC-2025-0028-0001 (last accessed May 23, 2025).

[3] Pub. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612); Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

[4] 5 U.S.C. §§ 601-612.

[5] *Id.* § 2(a)(4-5), 5 U.S.C. § 601 note (Findings and Purposes).

[6] *Id.* § 2(a)(4), 5 U.S.C. § 601 note (Findings and Purposes).

[7] U.S. SMALL BUS. ADMIN., OFF. OF ADVOCACY, FREQUENTLY ASKED QUESTIONS ABOUT SMALL BUSINESS, 2024 (July 2024), https://advocacy.sba.gov/wp-content/uploads/2024/12/Frequently-Asked-Questions-About-Small-Business_2024-508.pdf.

[8] U.S. Census Bureau, *Business Dynamics Statistics of U.S. High Tech Industries (BDS-HT)* (Oct. 2024), https://www.census.gov/data/experimental-data-products/bds-high-tech.html.

small businesses in the federal regulatory progress is focused on fostering small businesses as an important source of growth and competition in the U.S. economy.

Regulatory burdens have continued to increase over time within the United States, with an overwhelming amount of red tape generated by federal agencies. As a result, President Trump has committed to a government-wide initiative aimed at unleashing prosperity through deregulation, particularly for small businesses.[9] Advocacy is well positioned to support this effort. Advocacy has long worked with federal agencies to assist in reviewing rules to determine the impact of the regulatory burden on small entities, and since the RFA was enacted in 1980 all agencies have been required to conduct retrospective reviews of their regulations.[10]

To advance the President's agenda, on March 27, 2025, the U.S. Department of Justice (DOJ) launched an Anti-Competitive Regulations Task Force (Task Force) and published a Request for Information (RFI). The RFI invites public comments to eliminate anti-competitive state and federal regulations that undermine free market competition and harm customers, workers, and businesses. The Task Force is seeking information from the public about laws and regulations that make it more difficult for businesses to compete effectively, especially in markets that have the greatest impact on American households, including housing, transportation, food and agriculture, healthcare, and energy.[11] The Task Force asserts that regulations can impose undue burdens and costs on small businesses, inhibiting them from competing on a level playing field with powerful corporations, entering markets, and lowering prices for American families.

In addition, on April 9, 2025, the Federal Trade Commission (FTC) published an RFI inviting the public to comment on how federal regulations can harm competition in the American economy.[12] The FTC notes that regulations can become unnecessarily onerous and can exclude new market entrants, protect dominant incumbents, and predetermine economic winners and losers. Regulations that have the effect of reducing competition, entrepreneurship, and innovation hold back the American economy and should be eliminated or modified. The FTC encourages members of the public, including consumers, workers, businesses, start-ups, potential market entrants, investors, and academics, to comment on any issues or concerns that are relevant to the FTC's consideration of this objective.

III. Advocacy Outreach and Summary of Small Entity Issues

Advocacy commends the DOJ and the FTC for undertaking this review and for inviting the public to participate. This is the first time these agencies have put out such a public call, and Advocacy appreciates the opportunity to contribute. In response to the RFIs, Advocacy hosted a small business regulatory roundtable on April 30, 2025, to hear directly from small businesses and their representatives about which regulations are anti-competitive and burdensome and in need of review and reform. Nearly 140 people participated in Advocacy's roundtable, and many spoke and provided written materials during the roundtable and afterwards. Officials from the DOJ and the FTC provided a briefing to roundtable participants on their RFIs. Advocacy is

[9] *See, e.g.*, Exec. Order No. 14,192, 90 Fed. Reg. 9065 (Feb. 6, 2025); *see also* Exec. Order No. 14,219, 90 Fed. Reg. 10583 (Feb. 25, 2025).
[10] *See* 5 U.S.C. § 610.
[11] U.S. Dep't of Just., *supra* note 1.
[12] Fed. Trade Comm'n., *supra* note 2.

combining two similar Requests for Information on Anti-Competitive Regulations in one letter, to make our response more cohesive and comprehensive of comments received at the roundtable.

During the roundtable and via follow-up correspondence, Advocacy received 57 recommendations from small business stakeholders on 44 unique issues. Advocacy reviewed each issue submitted at the roundtable for their anti-competitive nature and assessed 20 of them to be responsive to this important information request effort. Advocacy submits these recommendations to DOJ and FTC to pursue reform or repeal of these regulations through the promulgating agencies in coordination with Advocacy. Advocacy continues to investigate each small business issue received from the roundtable to apply the information to interagency discussions or in response to other agency requests for information to achieve regulatory reform on behalf of the affected small businesses.

Advocacy is tasked to represent the diversity of small business views to federal agencies so they can understand the impacts of their policy actions on small businesses. Advocacy has organized small business recommendations and feedback in this letter by agency and consolidated issues that received multiple comments into single entries. Advocacy acknowledges that different small entities may have different viewpoints and perspectives on these issues and endeavored to capture and portray the relevant elements of the perspectives.

A. Department of Agriculture

Agricultural Marketing Service (AMS)

1. Organic Livestock and Poultry Production Standards[13]

Issue: The rule established new requirements for how organic livestock are handled, transported, and raised, setting new space requirements for layers and broilers. It includes prohibitions on common practices that ensure animal and producer safety. Additionally, the rule requires certain placards for vehicles when transporting livestock.

Anti-Competitive Effect on Small Business: Small organic poultry producers are concerned that the maximum stocking densities and living conditions for poultry are set at levels that make production more expensive and less productive for some small operations and will have negative implications for commercial poultry in the future. The final rule is anti-competitive towards small livestock and poultry producers who are seeking to transition into organic livestock and poultry production because the new density limits increase costs and thereby constrains small businesses in their efforts to operate productively and serve customers in new markets. It is especially harmful to those on the local or regional level. The rule acts as a barrier to entry for raising organic livestock and poultry due to excessive regulatory costs, leaving only larger companies in this space that can afford to absorb the extra cost of production, while passing the increased costs down to consumers. These compliance costs could also disrupt already fragile supply chains for organic meat and poultry products.

[13] National Organic Program (NOP); Organic Livestock and Poultry Standards, 88 Fed. Reg. 75394 (Nov. 2, 2023).

According to USDA, the rule imposes roughly $38 million in new compliance costs a year on the poultry industry. While USDA did not calculate how the estimated regulatory costs will be distributed on affected small businesses, USDA reported that the rule will affect 1,200 small organic egg producers and broilers, levying an average annual cost of $3,000 to $5,000 per firm, amounting to over $5 million in annual cost impact across the economy.[14]

Recommended Agency Action: Advocacy recommends that this rule be rescinded. Repealing this rule would allow for easier transition to organic livestock production and for current organic livestock producers to remain in organic production.

B. Department of Defense

Defense Federal Acquisition Regulation Supplement (DFARS)

2. Cybersecurity Maturity Model Certification[15] and Controlled Unclassified Information[16]

Issue: On October 15, 2024, the U.S. Department of Defense (DoD) published the final rule for the Cybersecurity Maturity Model Certification Program (CMMC).[17] This rule applies security requirements for all DoD contracts and solicitations when a contractor or subcontractor processes, stores, or transmits Federal Contract Information (FCI) or Controlled Unclassified Information (CUI) on unclassified contractor information systems. The CUI rule reinforces the CMMC guidelines and focuses on the cybersecurity protections required for any contractor handling CUI.

Anti-Competitive Effect on Small Business: Dozens of small businesses have told Advocacy that complying with CMMC imposes an extremely high financial cost, which raises entry barriers to compete for federal contracts. In recent months, as Advocacy has traveled across the country to meet with small manufacturers, these two regulations are at the top of the list for reform.

Advocacy has been at the forefront of this issue for many years, commenting and working with DoD to revise the CMMC.[18] Advocacy's involvement has resulted in the CMMC regulation being scaled down from 5 levels of certification to 3 levels. While Advocacy's involvement has previously resulted in reducing compliance costs, small businesses still find the CMMC framework to be unduly cost prohibitive.

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[14] U.S. DEP'T OF AGRIC., REGULATORY IMPACT ANALYSIS AND FINAL REGULATORY FLEXIBILITY ANALYSIS: ORGANIC LIVESTOCK AND POULTRY STANDARDS FINAL RULE, AMS-NOP-21-0073; RIN 0581-AE06 (Nov. 2023), https://www.regulations.gov/document/AMS-NOP-21-0073-39727.

[15] Cybersecurity Maturity Model Certification (CMMC) Program, Final Rule, 89 Fed. Reg. 83092 (Oct. 15, 1014).

[16] Federal Acquisition Regulation: Controlled Unclassified Information, 90 Fed. Reg 4278 (Jan. 15, 2025).

[17] *Id.*

[18] U.S. Small Bus. Admin, Off. of Advocacy, Comment Letter on Cybersecurity Maturity Model Certification (CMMC) Program (DoD-2023-OS-0063) (Feb. 26, 2024), https://advocacy.sba.gov/wp-content/uploads/2024/02/Comment-Letter-CMMC-Program-Proposed-Rule.pdf.

According to DoD's analysis, CMMC requirements will impose over $2 billion in total regulatory compliance costs on small business contractors over 20 years. DoD estimates the costs to implement a Level 1 and Level 2 self-assessment is $5,977 and $34,277 per small entity, respectively. The estimated costs to achieve Level 2 certification is estimated by DoD to be $101,752 per small entity.[19]

However, small manufacturers have submitted cost data to Advocacy that portray the impacts of Level 2 certification compliance to be much higher than DoD's estimate, costing between $150,000-800,000 in upfront costs plus $5,000-7,500 every month in consulting expenses. When adding in costs to maintain their systems over time, many small businesses have said that they will pay $1-2 million or more in compliance costs. These estimates do not account for any changes in the compliance standards, which would likely add even more costs. These costs will have a disproportionately adverse effect on small entities attempting to participate in federal procurement and will discourage new entrants from potential small business contractors. Further, since prime contractors sometimes cover the certification costs for sub-contractors, when small businesses pursue contracts directly or as secondary sub-contractors, they bear a disproportionate cost burden, which skews competition.

Recommended Agency Action: Advocacy recommends that DoD reengage with the small business defense contract community to gather more information and create targeted solutions. More accurately assessing the real-world impacts on small businesses due to compliance burdens will enable a more realistic consideration of viable alternatives. Small businesses have suggested several alternatives during roundtables with Advocacy. One alternative entails a regulatory modification of small business fixed price contracts to include an equitable adjustment clause to offset the cost of regulatory compliance. Another is that DoD could engage with the National Institute of Standards and Technology (NIST) and other federally funded research entities to find cost effective portals for small businesses to download DoD cyber protected data and work products rather than establish their own. It is clear than the estimates included in the analysis of the rule diverges significantly from first-hand accounts of affected small businesses. DoD should seek to address this discrepancy as soon as possible.

3. Use of Project Labor Agreements for Federal Construction Projects [20]

Issue: On December 2023, the FAR Council issued a final rule implementing Executive Order 14063 that would make it mandatory for agencies to have Project Labor Agreements (PLA) for federal construction contracts valued at $35 million or more. A PLA is a multiemployer, multi-union, pre-hire collective bargaining agreement that all general contractors and subcontractors on a jobsite must agree to win a contract to build a federal construction project. Advocacy submitted a comment to the FAR Council on the proposed rule and its potential negative impact on small construction contractors by deterring bidding on federal contracts and hampering federal small business goals.[21] Currently, E.O. 14063 is still in effect.

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[19] 89 Fed. Reg. at 83,205-07.

[20] Federal Acquisition Regulation: Use of Project Labor Agreements for Federal Construction Projects, 88 Fed. Reg. 88708 (Dec. 22, 2023).

[21] U.S. Small Bus. Admin., Off. of Advocacy, Comment Letter on FAR Case 2022-23, Mandatory Project Labor Agreement for Federal Construction Projects (Oct. 18, 2022), https://advocacy.sba.gov/wp-content/uploads/2022/10/PLA-Letter-final.pdf.

Anti-Competitive Effect on Small Business: Government-mandated PLAs typically contain provisions with anti-competitive and costly effects. E.O. 14063 was created to promote the economy, efficiency, and timeliness in the administration and completion of federal construction contracts.[22] Although this was the goal of PLAs, the result is the exact opposite. PLAs increase construction costs for taxpayers by 12% to 20%, create project delays, and exacerbate the construction industry's skilled labor shortage of 439,000 workers.[23] Government-mandated PLAs discourage quality contractors, and the 89.7% of U.S. construction workers who do not belong to a union, from bidding and on projects in their own communities paid for by their tax dollars. This regulation harms fair and open competition by tilting the scales toward unionized contractors, particularly harming small business construction contractors that are less likely to be unionized.

In addition, even if small businesses choose to compete for projects subject to PLA requirements, they are less capable of absorbing the additional associated costs than large companies. One survey of the construction industry found that 73 percent of federal contractors are not interested in bidding if there is a government-mandated PLA on a federal construction project.[24]

The annual total estimated cost impact of PLAs is estimated by the FAR Council to be $7.3 million to $26.1 million.[25] However, the FAR Council did not publish detailed analysis of the disproportionate costs on small entities or the cost from deterring small business participation in federal construction projects.

Recommended Agency Action: Advocacy is encouraged by a new Office of Management and Budget guidance document which allows agencies to exercise an exception to E.O. 14063 where a PLA would inhibit competition.[26] However, Advocacy recommends that E.O. 14063 be rescinded and that the FAR Council repeal the 2023 final rule. This change would allow small businesses to more fairly and openly compete for large-scale federal construction contracts, helping to increase the share of federal construction performed by small businesses. It would also benefit subcontractors and their workers, who are more likely to be small businesses and are required to sign PLAs negotiated by general contractors on federal projects. Alleviating the disincentives for small businesses to compete for federal contracts would promote competition and foster additional quality options for federal agencies.

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[22] Exec. Order No. 14,063, 87 Fed. Reg. 7363 (Feb. 9, 2022).
[23] Associated Builders & Contractors of Am., *About Government-Mandated Project Labor Agreements on Public Construction Projects*, https://www.abc.org/Politics-Policy/Issues/Project-Labor-Agreements.https://www.abc.org/Politics-Policy/Issues/Project-Labor-Agreements (last accessed May 23, 2025).
[24] Associated Gen. Contractors of Am., *2022 Project Labor Agreement Survey Results* (June 2, 2022), https://www.agc.org/sites/default/files/users/user21902/2022_PLA_Survey_FactSheet_F.pdf. *2022 Project Labor Agreement Survey Results* (June 2, 2022), https://www.agc.org/sites/default/files/users/user21902/2022_PLA_Survey_FactSheet_F.pdf.
[25] 88 Fed. Reg. at 88,724.
[26] OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB MEMORANDUM M-25-29, MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES (2025).

C. Department of Homeland Security

United States Citizenship and Immigration Services

4. Fee Rule[27]

***Issue*:** This rule significantly raised filing costs per business visa, increasing general petition fees and adding a $600 fee to pay for the separate asylum program. The final rule also limited the number of named beneficiaries on H-2A and H-2B visa petitions to 25 workers, when it had previously been unlimited, thus requiring additional petitions for employers filing petitions for more than 25 workers. Advocacy submitted a public comment letter on this proposed rule, citing concern with these increased fees.[28] Advocacy commented that the proposed rule would make it cost prohibitive for small businesses and small non-profits to hire necessary staff in the H-2A, H-2B, and H-1B visa categories, shutting them out of these vital immigration programs.

The agency's final rule adopted lower fees and asylum fees for nonprofits and small businesses with fewer than 25 workers.

Employers in the agricultural sector are still concerned that this final rule still raised I-129 filing fees (petition fees and asylum fees) for H-2A workers by 65-84% for small employers with fewer than 25 employees. Many H-2A "large employers" with 25 or more employees are small businesses according to SBA's size standards, yet their filing costs increased by up to 267%.[29]

Anti-Competitive Effect on Small Business: Small farms already operate on very thin profit margins and will have additional burdens in trying to shoulder these costs. Employers rather the visa recipients must pay all application costs. The per-petition limits in the final rule increases the number of H-2A petitions filed, adding extra fees, asylum fees, and the administrative burdens of filing this extra paperwork.

Small farms have commented that the increased fees are detrimental and disruptive to their operations that rely upon the H-2A visa as their primary workforce. These businesses operate in rural locations and are unable to find reliable U.S. employees to work in these agricultural jobs like field workers and livestock workers. Any increase in costs exacerbates the existing disadvantage American specialty crop producers have against foreign competitors who pay lower wages.

Recommended Agency Action: Advocacy recommends repealing this rule. Repealing the rule would lower production expenses and administrative compliance burdens for H-2A employers, allowing American farmers to better compete with foreign fruit and vegetable producers.

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[27] U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 89 Fed. Reg. 6194 (Mar. 31, 2024).

[28] U.S. Small Bus. Admin, Off. of Advocacy, Comment Letter on USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, (Mar. 10, 2023), https://advocacy.sba.gov/wp-content/uploads/2023/03/Comment-Letter-USCIS-Fees-Rules-508c.pdf.

[29] 89 Fed. Reg. 6194 (Jan. 31, 2024). USCIS provided for a fees discount for small businesses with fewer than 25 employees and nonprofits (50 percent off). USCIS provided a discount for the $600 asylum fee per petition, small businesses with fewer than 25 employees (50 percent off) and nonprofits (no fee).

5. Modernizing H-2 Program Requirements, Oversight and Worker Protections[30]

Issue: This final rule creates worker protections for H-2A and H-2B visa programs, such as whistleblower protection.[31] Employers in the agriculture sector consider this a "blacklisting" rule that expands USCIS authority to deny H-2 petitions and debar employers, including for issues that are outside the control of the small businesses. The rule also subjects employers whom USCIS deems have misused H-2 programs or violated labor laws to one to three years of debarment from the H-2 program. The rule states that USCIS could deny petitions from employers who have been subject to an administrative action by the DOL's Wage and Hour Division or other federal, state, or local agency that did not require debarment, provoking concerns from small businesses that arbitrary enforcement discretion could impact competitiveness. This rule is currently in litigation.[32]

Anti-Competitive Effect on Small Business: This regulation is anti-competitive towards small business because it creates barriers to small enterprises' ability to comply with the regulation due to their scale and introduces potentially arbitrary enforcement that could lead to biasing competition. Small employers rely on their agent's networks for recruitment and can be held responsible and lose access to the H-2A program for the actions of a bad actor in violation outside of an employer's control or knowledge. H-2 employers are subject to extensive regulations and are concerned that minor infractions may lead to denying a petition or debarment under this new discretionary authority. It will prevent small businesses from utilizing the program, forfeiting even more of U.S. food production to foreign competition.

Recommended Agency Action: Advocacy recommends that USCIS repeal this rule. Repealing the rule will allow small business employers to maintain access to H-2A visas to fulfill their labor needs and more effectively compete.

D. Department of Labor

Employment Training Administration

6. Adverse Effect Wage Rate (AEWR) Methodology for H-2A Visa[33]

Issue: The DOL utilizes an Adverse Effect Wage Rates (AEWR) methodology to calculate wages for H-2A agricultural visas that are dramatically higher than similar agricultural wages in countries like Mexico and Canada. In 2023, the DOL issued a final rule that increased these wages even further by creating two separate wages for H-2A workers: one for field workers and another higher rate for other occupation-specific wages such as truck drivers, farm supervisors

[30] U.S. Citizenship and Immigration Services, Modernizing H-2 Program Requirements, Oversight, and Worker Protections, 89 Fed. Reg. 103202 (Dec. 18, 2024).
[31] *Id.*
[32] This regulation is pending oral argument on a Motion for Summary Judgment in Federal District Court in Texas.
[33] Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States, 88 Fed. Reg. 12760 (Feb. 28, 2023).

and managers, and construction workers.[34]

Anti-Competitive Effect on Small Business: Today, more than 60% of the fresh fruit and 40% of the fresh vegetables consumed in the US are produced by foreign competition, primarily Canada and Mexico.[35] Global competitors in fresh fruit and vegetable markets already pay a fraction of U.S. farmers' labor expense. For example, the labor costs for Mexican agricultural workers are $1.51 USD per hour[36] and $10.80 to $12.95 USD per hour for Canadian agricultural workers.[37] The cost for U.S. agricultural workers through the H-2A program range from $16.23 to $19.97 per hour for field workers, and $26 to $29 per hour for truck drivers.[38] These impacts limit small farms' access to this necessary labor source and jeopardize their economic sustainability against foreign competitors.

In 2022, Advocacy commented that these small farms were disproportionately impacted by the higher H-2A wage costs and administrative burdens from this final rule. To minimize costs, employers would have to segregate their workforce into job categories and pay some positions for field workers and pay other positions the higher rate for truck driving. Small farms are likely to have fewer employees and their H-2A workers may each perform more varied tasks. This is a disadvantage compared to larger operations that may be able to better designate fewer tasks to more employees.[39] At the time of the rulemaking, one study estimated that the rule would raise small farm wage expenses by more than 12 percent a year and large farms by more than 5 percent a year.[40]

Advocacy spoke to one H-2A agent who analyzed the impact of this proposed rule on a few of their small business clients, including the impact of the increased wages and administrative costs. In one example, a small farmer in Wisconsin paying eight H-2A workers the 2022 AEWR of

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[34] *Id.*

[35] U.S. Dep't of Agric., Econ. Rsch. Serv., *Charts of Note* (July 31, 2023), https://www.ers.usda.gov/data-products/charts-of-note/chart-detail?chartId=107008.,https://www.ers.usda.gov/data-products/charts-of-note/chart-detail?chartId=107008 .

[36] Gobierno de Mexico, Data Mexico, *Workers in Agriculture*, Subgroup (611) – 2024-Q3, https://www.economia.gob.mx/datamexico/en/profile/occupation/trabajadores-en-actividades-agricolas?employSelector1=salaryOption (last accessed May 23, 2025). Using only formal agricultural workers' wages, the hourly wage would be: $4,640 MX * $0.51 per peso * 12 months in a year / 52 weeks in a year / 36.5 hours per week = $1.51 per hour.

[37] Gov't of Canada, *Wages by Agricultural Commodity, Fruits and Vegetables*, https://www.canada.ca/en/employment-social-development/services/foreign-workers/agricultural/agricultural-wages.html#h2.6 (last modified Apr. 10, 2025). The Canadian agricultural wages for fruits and vegetables range from $15-$17.98 CDN, which converts to $10.80-$12.98 USD per hour.

[38] U.S. Dep't of Lab., *H-2A Adverse Effect Wage Rates*, https://flag.dol.gov/wage-data/adverse-effect-wage-rates#nonrange. For H-2A truck drivers, the select wages are: California ($29.08), Michigan ($26.49), North Dakota ($28.77), and Washington ($32.34),

[39] U.S. Small Bus. Admin, Off. of Advocacy, Comment Letter on Adverse Effect Wage Methodology for Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United State (Jan. 31, 2022), available at: https://advocacy.sba.gov/wp-content/uploads/2022/01/Advocacy-Comment-Letter-H2A-Wage-Rule.pdf.

[40] Veronica Nigh, Am. Farm Bureau Fed'n, *AEWR Methodology Change a Blow to Growers*, (Mar. 30, 2023), https://www.fb.org/market-intel/aewr-methodology-change-a-blow-to-growers. The study modelled a limited version of what the bifurcated wages would have on two farms: a small farm employing 10 H-2A workers and a larger farm employing 70 H-2A workers. For 2023, this model found an increased wage outlays for the small farm (12.6 percent) and a large farm (5.5 percent) in 2023.

$15.37 would convert two workers to a higher trucking AEWR of $23.80. In total, the farmer would be paying an additional $44,393 in compliance costs per season. In another example, a small farmer in New Mexico paying 32 H-2A workers the 2022 AEWR of $14.79 would convert eight workers to a higher trucking AEWR of $20.71. This farmer would pay an additional $124,235 in compliance costs in a season.[41]

Recommended Agency Action: Advocacy recommends that the DOL repeal this rule. Advocacy also recommends that DOL undertake a new proposed rule to reevaluate how the AEWRs should be recalibrated to more closely meet the competitive global market wages. Repealing the final rule or recalibrating the wages for the H-2A visa program would ensure that small farms can obtain vital agricultural guest workers to grow our nation's food supply.

7. Improving Protections for Workers in Temporary Agricultural Employment in the United States[42]

Issue: The National Labor Relations Act (NLRA) excludes from its protections workers who are engaged in agriculture under the Fair Labor Standards Act. A recent DOL final rule expanded certain NLRA labor protections for H-2A workers, such as the right to organize and engage in collective action, protect against anti-retaliation or anti-blacklisting against workers who exercise rights, clarifies termination for cause, and allows representation at employer-provided housing and discipline meetings. The rule also eradicated the 14-day grace period to implement annual adverse effect wage rate updates.

Anti-Competitive Effect on Small Business: Small farmers currently face multiple instances where they must immediately begin paying new wages upon posting in the *Federal Register*, with no lead time to allow for updates to administrative procedures, payroll systems, or bookkeeping. Small employers likely do not have administrative teams, so this process can be complicated and taxing. This complexity makes it difficult for small farms to operate at peak capacity and inhibits their competitiveness against larger farms that can more readily pivot.

In addition, this rule is currently being implemented under a patchwork of preliminary injunctions, and the DOL is prohibited from enforcing parts of this rule in 17 states. That alone causes hurdles for small farmers to figure out what pieces of the rule, if any, they are subject to, and it may fluctuate for those operating in multiple states. This added administrative burden further and disproportionately impacts small businesses' competitiveness.

Recommended Government Action: Advocacy recommends repealing this rule. Repealing the rule would ease administrative complexity for small businesses by reinstating the grace period for implementing new wage requirements. Additionally, it would ease the confusion of the different requirements by state due to litigation.

[41] U.S. Small Bus. Admin, Off. of Advocacy, *supra* note 39.
[42] Improving Protections for Workers in Temporary Agricultural Employment in the United States, 83 Fed. Reg. 33898 (Apr. 29, 2024).

Occupational Safety and Health Administration (OSHA)

8. Heat Injury and Illness Prevention[43]

Issue: This proposed rule would apply to all outdoor, indoor, and hybrid workplaces in general industry, construction, agriculture, and maritime that exceed OSHA proposed initial and high heat triggers of 80- and 90-degrees Fahrenheit, respectively (with certain exceptions). The rule would require employers to implement a heat injury and illness prevention plan at the initial heat trigger (80 degrees) and would mandate more stringent requirements, such as mandatory 15-minute rest breaks every two hours, above the high heat trigger (90 degrees). The rule has not been finalized.

Anti-Competitive Effect on Small Business: According to OSHA, small entities overall are estimated to incur annualized costs of approximately $8.2 billion total from the provisions of the rule, which includes familiarization, prevention planning, identifying hazards, specific requirements at high temperature thresholds, response planning, and training.[44] These new compliance costs will put small entities at a competitive disadvantage related to large firms as they are less able to spread these costs out over their operations.

Small businesses and their representatives have repeatedly stated that while the safety and health of their employees is their paramount concern, they do not want OSHA to adopt a "one-size-fits-all" regulatory approach. Rather, they believe OSHA should provide maximum flexibility based on the broad diversity of industry sectors, workplaces, employee risk, and regional differences.[45] A commenter from the agriculture sector stated that the proposed rule is inflexible and creates administrative burdens for small and family farms and includes ambiguous language such as "suitably cool" drinking water and "readily accessible" shade. The commenter stated that small farms generally do not have designated human resource personnel to handle regulatory compliance and recordkeeping and would have to hire outside assistance or find time to themselves evaluate and comply.

Rigidly mandated breaks run the risk of prolonging harvest and packing activities. Further, specialty crops that require hand labor are generally highly perishable. Compliance with this rule, then, may result in losing crops, reducing revenues, falling short of contracts, and more effects. Additionally, multiple pieces of the rule would raise costs for producers, particularly those who would be required to refurbish or build indoor cooling areas. These indoor agricultural structures that may be required to be refurbished include milking parlors, barns, mechanic's shops, trailers, and greenhouses, all of which will require some sort of tailoring to fit each use case and location. Similar concerns have been raised by small business representatives in other sectors, such as construction and manufacturing.

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[43] Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, 89 Fed. Reg. 94631 (Nov. 29, 2024).
[44] 89 Fed. Reg. at 70,975.
[45] U.S. Small Bus. Admin, Off. of Advocacy, Comment Letter on Heat Injury and Illness Prevention in Outdoor Work Settings (Jan. 13, 2025), https://advocacy.sba.gov/wp-content/uploads/2025/01/Comment-Letter-Heat-Injury-and-Illness-Prevention-in-Work-Settings-011325.pdf.

The rule would impose additional costs on small businesses and make it difficult to compete where they lack the economies of scale that large firms possess. Agriculture relies on fluctuating prices in the global marketplace and cannot raise prices to accommodate these new production costs. The additional costs from this rule would continue to disadvantage American farmers and ranchers' competitiveness in the global market.[46]

Recommended Agency Action: OSHA should withdraw the proposed rule and, if considering a new rule, focus on requirements that are focused on worker outcomes over subjective environmental variables, ensuring any rule is flexible enough to accommodate the diversity of industry sectors and geographic regions covered.[47] Any final rule should focus on training and education rather than recordkeeping. This would provide additional flexibility and better align with existing best practices in place across industries.

Wage and Hour Division (WHD)

9. Davis-Bacon and Related Acts Regulations[48]

Issue: In August 2023, the DOL issued a final rule updating regulations under the Davis-Bacon and Related Acts (DBRA) for federal construction contracts.[49] The rule expanded coverage of the DBRA to additional industries and changed the calculation of prevailing wages which increased pay. Specifically, the DBRA coverage expanded to small businesses including prefabrication businesses, material suppliers, truck drivers, demolition companies, flaggers, surveyors, and green technology businesses.[50] In the comment letter on the proposed rule, Advocacy commented that DOL's initial regulatory flexibility analysis failed to analyze the numbers of newly covered small businesses in these industries and estimate the economic impact to these entities.

Anti-Competitive Effect on Small Business: Advocacy's comment letter also cited concern that DOL only estimated Year 1 costs to small businesses at around $50 per entity, estimated at 1 hour to understand the rule and 30 minutes to implement the rule.[51] A majority of small construction businesses surveyed stated it would take longer than 30 minutes to implement the proposed rule's changes. Implementation might take two to three hours of time from five employees per impacted firm. A construction trade association estimated that the added regulatory costs of this rulemaking on small businesses are at least $350 million to $377.2

[46] Am. Farm Bureau Fed'n, Comment letter on Heat Injury and Illness Prevention in Outdoor Work Settings (Jan. 14, 2025), https://www.regulations.gov/comment/OSHA-2021-0009-25344.
[47] *See supra* note 45.
[48] Updating the Davis-Bacon and Related Act Regulations, 88 Fed. Reg. 57526 (Aug. 23, 2023).
[49] 40 U.S.C. § 314.
[50] 89 Fed. Reg. 1630 (Jan. 10, 2024).
[51] U.S. Small Bus. Admin, Off. of Advocacy, Comment Letter on Davis-Bacon Act Proposed Rule (May 18, 2022), https://advocacy.sba.gov/2022/05/18/advocacy-comments-on-davis-bacon-act.

million ($295.4 million in familiarization costs plus $54.54 million to $81.1 million in implementation).[52]

Small businesses newly covered by the DBRA may have the highest compliance costs under this rule, as they have no experience working in the bureaucratic regulatory regime. For example, these small businesses will have to learn how to submit weekly certified payrolls, evaluate prevailing wage and work rules, and pay and provide fringe benefits. Small and traditionally non-federal contractors may lack the in-house legal or administrative staff to navigate the payroll and recordkeeping obligations. The increased compliance burdens and costs act as a deterrent for small firms to pursue federal construction contracts, thereby consolidating market opportunities among large, well-sourced contractors.

The government has conducted wage surveys to determine these prevailing wages in a manner that biases wages toward union groups, setting artificially inflated wages. The final rule's new prevailing wage methodology will increase the prevailing wages even more for existing and newly covered DBRA small businesses. Yet none of these costs were calculated in the initial regulatory flexibility analysis (IRFA).

Recommended Agency Action: This rule is currently in federal litigation. Parts of it have also been stayed.[53] Regardless, Advocacy recommends this rule be repealed because it adds a significant amount of new small businesses to DBRA coverage and adopts a prevailing wage methodology that sets artificially high wages. Small business stakeholders also provided the following specific recommendations:

- Small business representatives in the construction field recommend that the DOL implement rulemaking or sub regulatory action to update the speed and accuracy of the prevailing wage determination process. The DOL could utilize the U.S. Bureau of Labor Statistics data or another method to improve this process. A new regulatory action should clarify labor classification and work rules.
- Another roundtable participant recommended that the agency delete references to survey crews being included in DBRA coverage.
- A small government executive recommended that DOL work with Congress to increase the $2,000 statutory threshold for DBRA coverage be increased to keep up with inflation, so that the DBRA requirements are not triggered for every federal construction project.

[52] Associated Builders & Contractors, Comment letter on Updating the Davis-Bacon and Related Acts Regulations Proposed Rule 59-60 (May 17, 2022), https://www.regulations.gov/comment/WHD-2022-0001-40849.
[53] *See* U.S. Dep't of Lab., *Final Rule: Updating the Davis-Bacon and Related Acts Regulations*, https://www.dol.gov/agencies/whd/government-contracts/construction/rulemaking-davis-bacon (last accessed May 12, 2025).

10. Fair Labor Standards Act (FLSA) Exemption for Companion Care[54]

***Issue*:** In 2013, the DOL finalized a rule which narrowed the companion care services exemption to minimum wage and overtime under the FLSA, prohibiting third-party employers such as home care agencies and home care registries from utilizing this exemption.[55]

***Anti-Competitive Effect on Small Business*:** This final rule significantly changed the marketplace for companion care small businesses. Many of them provide or refer caregivers to elderly and disabled clients who need more than 40 hours per week in services or live-in home care. Compliance with FLSA rules now requires complex scheduling of 5-8 caregiver schedules to cover these hours to minimize overtime payments, adding administrative staff costs and burdens. These costs discourage new businesses from entering the market and have accelerated industry consolidation, leading to reduced competition and fewer choices for customers. Small businesses reported losing caregivers to other vocations and losing clients to institutional care and the unregulated gray market.

Advocacy submitted a comment letter recommending that the DOL reevaluate the compliance costs of this rulemaking. DOL only estimated first year costs and recurring costs of $180 to $5,000 per small business from this rule.[56] A survey of 69 home care agencies found that half of the respondents lost more than $500,000 a year in revenue from the loss in live-in care, and a majority responding reported increased overtime costs of between $100,000-$500,000 on an annualized basis due to this rule.[57] Six small home care registries reported first year costs of $111,000 to $4.3 million due to this rule. These costs included regulatory familiarization, training, and loss of revenue from a drop in live-in cases and due to the drop-in average hours of care per client per week.[58]

Recommended Agency Action: Advocacy recommends that the DOL repeal the 2013 final rule.

11. FLSA Exemption for Executive, Administrative and Professional (EAP) Employees[59]

Issue: In April 2024, the DOL released a final rule that would have increased the required minimum salary level to be exempt from overtime and minimum wage requirements under the FLSA from $35,568 to $58,656, a 65 percent increase.[60] This rule impacts almost every industry, including construction, retail, recreation, accommodation, food services, nonprofits, and state

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[54] Application of the Fair Labor Standards Act to Domestic Service, 78 Fed. Reg. 60454 (Oct. 1, 2013).
[55] *Id.*
[56] U.S. Small Bus. Admin, Off. of Advocacy, Comment Letter on Application of the Fair Labor Standards Act to Domestic Service; Proposed Rule (March 12, 2012), https://www.regulations.gov/comment/WHD-2011-0003-7756.
[57] Home Care Ass'n of Am., The Impact of the Companion Exemption Repeal Survey (April 2025) (internal survey) (on file with author). 68 home care agencies surveyed are considered small businesses by the Small Business Administration's small business size standard (below the $19 million-dollar annual revenue amount).
[58] Lori Dahan, Priv. Care Ass'n, Comment Letter on Anti-Competitive Regulations Task Force, tbl.1 (May 8, 2025), https://www.regulations.gov/comment/ATR-2025-0001-0071.
[59] Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, 89 Fed. Reg. 32842 (Apr. 26, 2024).
[60] *Id.*

and local governments. The DOL's final overtime regulations were vacated by a federal court on November 15, 2024, on grounds that the agency overstepped its legal authority. The minimum salary threshold is currently $35,568.[61]

***Anti-Competitive Effect on Small Business*:** Advocacy commented that the DOL's initial regulatory flexibility analysis (IRFA) was deficient because it underestimated the economic impact of this rule on small entities. DOL's IRFA included average first year cost estimates of $4,323 per small entity to comply with the rule.[62] Participants at Advocacy's roundtables reported much higher first year cost estimates at $20,000 to over $200,000 per small entity. Small businesses will have disproportionate impacts from these high salary increases for EAP employees. Small operations lack in-house legal and HR staff to understand and implement this rule to their businesses, and they may struggle to afford these high wage increases in low-cost or rural areas.

This regulation also reduces competitive advantages of small employers in low cost-of-living areas have over their competition in high cost-of-living areas. In 2022, the annual mean wage in the U.S. for first-line supervisors for food-prep was $41,020, $44,350 in California, $40,190 in Pennsylvania, and $37,310 in Georgia. In each of these states, employers would have paid tens of thousands of dollars to keep the overtime threshold, pay excess overtime costs, or minimize the hours for these workers.[63] Advocacy estimates the small business cost impact of the DOL overtime rule is roughly $4.5 billion total.[64]

Recommended Agency Action: Advocacy recommends that the DOL repeal the 2024 final overtime rule.

E. Department of Transportation

Federal Motor Carrier Safety Administration (FMCSA)

12. Broker Transparency[65]

Issue: Current regulations at 49 CFR § 371.3 require brokers to maintain and provide records of each freight transaction to carriers and shippers upon request. While this regulation exists to ensure transparency in freight transactions, carriers complain that the regulation is not enforced by FMCSA and is circumvented using contractual waivers and confidentiality clauses. As a result, carriers say they cannot verify payments, challenge disputes, or assist law enforcement when fraud occurs.

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[61] *See* U.S. Dep't of Lab., *Final Rule: Restoring and Extending Overtime Protections*, https://www.dol.gov/agencies/whd/overtime/rulemaking (last accessed May 14, 2025).
[62] U.S. Small Bus. Admin, Off. of Advocacy, Comment Letter on Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, 88 Fed. Reg. 62152 (Nov. 7, 2023), https://advocacy.sba.gov/wp-content/uploads/2023/11/Comment-Letter-DOL-Overtime-Regulations-508.pdf.
[63] *See* U.S. Dep't of Lab., *Bureau of Labor Statistics, Occupational Employment and Wage Statistics, 35-1012 First Line Supervisors of Food Preparation and Servicing Workers*, https://www.bls.gov/oes/2022/may/oes351012.htm (last accessed May 23, 2025).
[64] Advocacy estimate of the final regulatory flexibility analysis at 89 Fed. Reg. 32,943-68.
[65] Transparency in Property Broker Transactions, 89 Fed. Reg. 91648 (Nov. 20, 2024); 49 C.F.R. § 371.3 (2024).

FMCSA's proposed rule would require that records be kept in electronic format and provided within 48 hours upon receiving a request. The issue of broker transparency and freight theft has drawn considerable interest and conflicting viewpoints.

Anti-Competitive Effect on Small Business: Multiple commenters support the proposed rule. Some argue that small carriers and owner-operators are left financially vulnerable without access to transaction records, delaying or preventing payment, and reducing their ability to challenge fraudulent or unfair practices. Some commenters believe FMCSA must ensure a more robust regulatory framework for combating fraud, including double brokering, stolen loads, and identity theft. These are issues they say disproportionately impact small carriers and costs the U.S. economy over billions of dollars annually.[66]

Broker representatives have opposed the proposed rule, stating that disclosure undermines market competition and forces the revelation of confidential pricing and business strategies. A petition by representatives of the brokers to repeal the existing rule was declined by FMCSA as inconsistent with transparency requirements.

Other commenters have said FMCSA should view this issue in the context of the broader issues of freight fraud. One commenter stated that FMCSA should not use the current rulemaking to expand contractual provisions designed for shippers and carriers to allow intermediaries to waive existing legal remedies. Another commenter recommends that FMCSA implement more robust identify protections, such as Transportation Worker Identification Credentials (TWIC) or similar identify protections, to combat fraud.

Recommended Agency Action: Commenters seek to promote balance and fairness in the broker-carrier relationship, allow small carriers to verify payment discrepancies and claims, and protect their businesses from fraud, identity theft, and reputational damage. Commenters stated that FMCSA should focus its efforts on enhancing highway safety and addressing the larger supply chain fraud issue.

Advocacy believes that FMCSA should ensure a regulatory framework that is fair, open, transparent, and efficient, consistent with the national transportation policy articulated at 49 U.S.C § 13101. Further, Advocacy believes FMCSA must address the broader issue of freight fraud and should consider direct stakeholder engagement as part of a multi-departmental and criminal matter. As there has already been regulatory action in this area, some of which is formally still in progress, Advocacy urges FMCSA to thoroughly engage the multiple small business perspectives that fall on various sides of this particular issue, utilizing the formal interaction dimension of the negotiated rulemaking process.

[66] *See* Jeff Berman, *New TIA Report Examines Deepening Freight Fraud Crisis*, LOGISTICS MGMT. (May 9, 2025), https://www.logisticsmgmt.com/article/new_tia_report_examines_deepening_freight_fraud_crisis#:~:text=Based%20on%20data%20from%20the,many%20tied%20to%20cargo%20theft ("Based on data from the National Insurance Crime Bureau, cargo theft costs the industry up to $35 billion annually, for a 1,500 percent increase in incidents since 2021.").

13. Entry-Level Driver Training (ELDT) Requirements[67]

Issue: The ELDT rule requires minimum training standards for new commercial driver's license (CDL) applicants, including classroom and behind-the-wheel instruction, by FMCSA-registered providers.[68] While intended to improve safety, the rule imposes significant costs and logistical burdens on small fleets and owner-operators who often serve as trainers. The requirement to use FMCSA registered providers limits flexibility and administrative compliance (e.g., submitting training certifications) and diverts resources from small businesses. This disproportionately affects women, who face additional barriers entering the industry due to harassment or limited access to quality training.

Anti-Competitive Effect on Small Business: The ELDT requirements create a barrier to entry by increasing the cost and complexity of training new drivers, which small carriers cannot absorb like large carriers. According to industry estimates from small business stakeholders, compliance costs can exceed $5,000 per driver. Additionally, small business stakeholders shared that the rule forces carriers to rely on expensive third-party schools, which can cost $6,000-$10,000 per student. This restriction favors large fleets with in-house training programs who can incur a lower cost per student. The rule results in reduced competition, limited access to registered trainers, and hinders the ability to scale.

Requested Agency Action: FMCSA should revise the existing rules to: (1) allow experienced owner-operators and small fleet drivers with clean safety records to serve as trainers without mandatory FMCSA registration, provided they complete a streamlined certification; and (2) reduce administrative reporting by allowing digital submissions via existing FMCSA portals. These reforms would lower training costs, reduce administrative burdens, and increase competition.

14. Speed Limiting Devices[69]

Issue: The proposed speed limiter mandate would require trucks over 26,000 pounds to be equipped with electronic speed governors, likely capping speeds between 65-70 mph. While aimed at improving safety, the rule increases costs for installation and maintenance of the equipment and reduces operational efficiency for small fleets and owner-operators. Small business commenters opposed the proposed rule, citing safety risks from speed differentials with other vehicles and traffic disruptions.

Anti-Competitive Effect on Small Business: According to one commenter, the speed limiter mandate imposes installation costs of $500-$1,500 per truck, which small fleets and owner-operators would struggle to afford compared to large carriers with economies of scale. Also,

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[67] 49 C.F.R. § 391.11(b)(2) (2024).
[68] *See* Fed. Motor Carrier Safety Admin., *Entry-Level Driver Training (ELDT),* https://www.fmcsa.dot.gov/registration/commercial-drivers-license/entry-level-driver-training-eldt (last updated Feb. 8, 2022).
[69] Parts and Accessories Necessary for Safe Operations; Speed Limiting Devices, 87 Fed. Reg. 26317 (May 4, 2022); Parts and Accessories Necessary for Safe Operation; Speed Limiting Devices, 81 Fed. Reg. 61942 (Sept. 7, 2016).

reduced speeds extend delivery times and decrease revenue for small businesses on tight schedules, especially in regional markets. The rule favors large trucking fleets with diversified revenue streams and railroads, consolidating market power and limiting the market participation of small operators.

Requested Agency Action: FMCSA should withdraw the speed limiter mandate or, alternatively, revise it to: (1) exempt small fleets, (2) provide flexibility based on regional road conditions, and (3) consider ways to offset installation costs for small businesses.

F. Department of the Treasury

Internal Revenue Service (IRS)

15. Research and Development (R&D) Expensing[70]

Issue: Since 1954, Section 174 of the federal internal revenue code has allowed businesses to deduct qualified research expenses in the year those costs were incurred. Congress created the related research and development (R&D) tax credit in 1981.[71] These long-standing rules provided for a current tax benefit that matched up with current expenditures. This structure helped existing and startup businesses see immediate tax incentives to support spending funds on innovation. As part of the Tax Cuts and Jobs Act of 2017,[72] Congress changed how taxpayers write off R&D expenses by no longer allowing firms to write off R&D expenses in the year they were incurred. Small businesses have been repeatedly raised concerns about the change at Advocacy roundtables across the country over the past three months, regularly stating that they are less inclined to invest in R&D under the new regime.

Anti-Competitive Effect on Small Business: A significant portion of R&D is conducted by small businesses. Advocacy research has found that, among businesses engaged in R&D, small businesses spend a higher percentage of their sales on R&D (10-20 percent) than large businesses (about 5 percent).[73] Firms must now amortize R&D expenses over five years, which causes significant cash flow problems for small businesses and disproportionately impacts their expenses relative for large businesses, especially the ability to cover payroll costs at small engineering and manufacturing firms. Requiring R&D expenses to be deducted over five years creates a disincentive for investment in innovation and places the U.S. at a competitive disadvantage to other countries that provide greater incentives for R&D. It also places startups at a competitive disadvantage to incumbents who may not be impacted as much by the change.

Recommended Agency Action: Advocacy recommends that Section 174 of the Internal Revenue Code be amended to allow for qualified R&D expenses to be deducted during the year in which the expenses are paid or incurred.

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[70] 26 U.S.C § 174.
[71] Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, 95 Stat. 172.
[72] Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).
[73] U.S. Small Bus. Admin., Off. of Advocacy, *Small Business Facts: Small Business Contributions to Research and Development* (Sept. 2022), https://advocacy.sba.gov/wp-content/uploads/2022/09/Fact-Sheet_Small-Businesses-Perform-an-Increased-Share-of-RD.pdf.

G. Environmental Protection Agency (EPA)

16. Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances[74]

Issue: This rule classifies perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFAS) as "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Anti-Competitive Effect on Small Business: This regulation imposes substantial cost and liability impact on small entities.[75] However, EPA certified that the rule would not have a significant impact on a substantial number of small entities. EPA estimated that direct costs per small entity would range from $2,600 - $3,600, but omitted indirect cost components from their calculations.[76] Costs for the adequate cleanup of PFOA/PFAS under CERCLA are substantial, which will drive up the cost to purchase property. Additionally, the rule fails to account for a variety of other direct costs small businesses could incur, including the number and types of sites that might need response activities along with information on the magnitude and extent of PFOA and PFAS contamination, the cleanup standards that must be met by remedial activities, and the technology costs for assessing and remediating the various contaminated media at sites. These costs make opening a new plant, either manufacturing or using PFAS, more difficult, which constitutes an entry barrier.

Recommended Agency Action: Advocacy recommends EPA repeal this rule. There are existing statutory authorities outside of CERCLA that can better address PFAS.

H. Federal Communication Commission (FCC)

17. Exclusivity and Non-Duplication Rules[77]

Issue: The FCC's exclusivity and non-duplication rules prevent small, rural multichannel video programming distributors (MVPDs) from including content of neighboring Designated Market Areas (DMAs) within their video package broadcasts.

Anti-Competitive Effect on Small Business: Small MVPDs may prefer to find broadcast content at a more affordable rate from a broadcaster in a neighboring DMA. Often, content from neighboring DMAs has more relevance to the local communities. The exclusivity and non-duplication rules force small programmers to buy content from an entity that has been given an

[74] 90 Fed. Reg. 39124 (May 8, 2024).
[75] U.S. Small Bus. Admin, Off. of Advocacy, Comment Letter on Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances, Docket ID: EPA-HQ-OLEM-2019-0341 (Nov. 7, 2022), https://advocacy.sba.gov/wp-content/uploads/2022/11/Designation-Letter-CERCLA-PFAS-11.7.22.pdf.
[76] 89 Fed. Reg. at 39,184-85.
[77] 47 C.F.R. §§ 76.92-76.94, 76.101-76.105.

artificial and antiquated geographic monopoly over content delivered via public airwaves. The monopoly conferred to national content providers by these rules over content distribution enables broadcasters to increase retransmission consent fees because the rules lock MVPDs into procuring content from a single seller via government fiat.

Recommended Agency Action: Advocacy recommends that the FCC reconsider how the exclusivity and non-duplication rules impact small MVPDs. Small MVPDs ask that the agency eliminate the exclusivity and non-duplication rules altogether. This would inject much-needed market forces into the retransmission consent process by allowing MVPDs to look to a variety of sellers for broadcast content. Removing this rule would allow small rural MVPDs to access content from neighboring or other DMAs to the extent that it is available at a lower rate or to otherwise respond to consumer demand for more relevant broadcast content.

18. MVPD Regulations[78]

Issue: FCC should undertake a comprehensive review of Part 76 rules to determine how it can level the playing field between traditional MVPDs (which include cable television and IPTV providers) and virtual MVPDs (which include operators like YouTube TV). Virtual MVPDs are generally not subject to many of the FCC's Part 76 rules.

Anti-Competitive Effect on Small Business: Mandatory fees and compliance costs arising out of the Part 76 rules present a distinct challenge to smaller and rural MVPDs as they try to complete with larger traditional MVPDs. These larger companies generally have more resources to manage these requirements and greater bargaining power to negotiate reductions in the mandatory fees that must be paid to monopoly sellers of broadcast content.

Recommended Agency Action: Advocacy recommends that the FCC systematically look at its regulatory regime for MVPDs and examine what has worked to protect consumers and/or advance statutory requirements set forth by Congress, and what has not, and then consider what should be kept, discarded, or modified. Small MVPDs asked that the FCC undertake a comprehensive review of Part 76 rules to determine where measures could be amended or eliminated to relieve burdens that apply uniquely and disproportionately to smaller and rural MVPDs. To the extent that smaller and rural MVPDs face additional compliance burdens from Part 76 requirements, competition will be uneven. To enable smaller and rural MVPDs to be more competitive, the FCC should work to level the playing field by removing anti-competitive restrictions. Releasing legacy providers from unnecessary and outdated regulations would go a

[78] 47 C.F.R. Part 76 generally, including but not limited to the following rules: must carry (47 CFR § 76.62), franchising (47 CFR § 76.41), regulatory fees (47 CFR § 1.1155), emergency alert (47 CFR § 11.11), children's television commercial limits (47 CFR § 76.225), program exclusivity rules (47 CFR § 76.101-110), notice and reporting requirements (e.g., 47 CFR § 76.1600), rules relating to political programming (47 CFR § 76.205-206), sponsorship identification (47 CFR § 76.1615), public inspection file requirements (47 CFR § 76.1700-1716), commercial leased access (47 CFR § 76.970-977), ownership rules and restrictions (47 CFR § 76.501), subscribership limits (47 CFR § 76.503), limits on carriage of vertically integrated programming (47 CFR § 76.1301-1302), regulation of services, facilities, and equipment (47 CFR § 76.601-640), technical standards (47 CFR § 76.605), and customer service rules (47 CFR § 76.309).

long way towards enabling them to compete on an even playing field and serve their rural communities.

19. Mandatory Disaster Information Reporting System[79]

Issue: The FCC established the Disaster Information Reporting System (DIRS) to allow communications providers to report service outages to the FCC during significant weather events, which would be announced by the FCC in a Public Notice. In 2024, the FCC revised the DIRS rules to require cable, wireless, wireline, and interconnected Voice Over Internet Protocol (VoIP) providers to submit daily infrastructure status reports in areas where the FCC has activated DIRS.

Anti-Competitive Effect on Small Business: Small rural communications providers are typically situated in the communities they serve and have fewer employees. In the aftermath of a disaster, these small companies are immersed in the business of assessing damage and restoring service, and reporting progress takes away time and resources from recovery to a much greater extent than large businesses that are usually headquartered outside the disaster area and have employees spread throughout the country. Furthermore, these small businesses often must operate in the face of direct impacts on employees and offices that may have also incurred damage.

Recommended Agency Action: Advocacy recommends that the FCC revise 47 C.F.R. § 4.18 to allow small communications providers flexibility and time during a disaster to file according to a schedule that better meets their needs and abilities and does not take staff time away from service restoration. Requiring daily infrastructure reports does not hasten the repair or restoration of service to consumers and small businesses stated that compelling reporting during emergency issues is more likely to divert resources from the job of restoring service for small providers and their communities.

I. Federal Trade Commission

20. Non-Compete Clause Rule[80]

Issue: The FTC's noncompete rule, which was finalized in April 2024, aimed to prohibit employers from entering new noncompete agreements with workers and render most existing ones unenforceable. The rule upheld existing non-competes for senior executives, but rendered existing non-competes with non-senior executives unenforceable.[81] In August 2024, a federal judge issued a nationwide injunction blocking the rule, stating that the FTC lacked the authority to implement such a sweeping ban. The FTC appealed the decision but requested a 120-day stay of its appeal to reassess its position in March 2025. The courts granted this request, pausing the appeals until July 2025.[82]

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[79] 47 C.F.R § 4.18.
[80] Non-Compete Clause Rule, 89 Fed. Reg. 38342 (May 7, 2024).
[81] *Id.*
[82] Fed. Trade Comm'n, *Noncompete Rule*, https://www.ftc.gov/legal-library/browse/rules/noncompete-rule (last accessed May 25, 2025).

Anti-Competitive Effect on Small Business: When the rule was proposed, some small businesses were in favor of restricting the use of noncompete clauses, particularly those in the medical profession and franchisees. These businesses stated that non-compete clauses are problematic when their franchise agreement ends because the franchisor may make unreasonable demands when renegotiating their contract.

Others expressed concerns that banning non-competes would counterintuitively decrease competition. Many small businesses use non-compete clauses to protect the human capital investments made in their employees, as well as their confidential business information. For example, a small firm that invested a significant amount of time and capital training an apprentice would have no recourse if their apprentice left to work for a competitor or start their own business as soon as the apprenticeship was complete.

Using FTC's analysis, Advocacy estimates the noncompete rule imposes nearly $5.8 billion in total small business costs.[83]

Recommended Agency Action: The FTC should adopt an approach that addresses the different concerns of small entities in the marketplace, estimate the full impacts of changes to non-compete clauses, and consider and analyze alternative approaches for small entities on an industry-specific basis that will minimize adverse impacts while achieving agency objectives.[84] Due to differing concerns among small entities, an outright ban on non-compete clauses would likely be inappropriate. The FTC should also gather information on how newly enacted state laws regarding non-competes factors into any potential federal regulatory action.

IV. Conclusion

Advocacy commends the DOJ and the FTC for pursuing this regulatory review process and seeking feedback on laws and rules that make it difficult for small entities to operate, that create barriers to entry, and that undermine free market competition. Advocacy is prepared to collaborate with the DOJ and the FTC to achieve lasting and impactful results from this initiative, drawing on input from small entities from across the country. Advocacy will continue the important work of engaging with small businesses, small nonprofits, and small governmental jurisdictions to understand how regulations impact them and facilitate the sharing of their feedback and concerns to the DOJ and the FTC.

As the DOJ and FTC work with other agencies to consider potential regulations for revision and rescission, Advocacy encourages these agencies to reach out to us early in the process and wherever necessary. Advocacy also encourages these agencies to consider all the potential impacts that their actions will have on small entities, as required under the Regulatory Flexibility Act.

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[83] Advocacy estimate of the final regulatory flexibility analysis at 89 Fed. Reg. 38,490-500.
[84] U.S. Small Bus. Admin, Off. of Advocacy, Comment Letter on Federal Trade Commission's Non-Compete Clause Rule, RIN 3084-AB74 (Mar. 20, 2023), https://advocacy.sba.gov/wp-content/uploads/2023/03/FTC-Noncompete-Clause-Comment-Letter-Filed.pdf.

Please feel free to contact me or Janis Reyes at (202) 798-5798 or Janis.Reyes@sba.gov if you have any questions or require additional information.

Sincerely,

/s/

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