



## U.S. Regulatory Update

6th International Metalworking Fluids Conference

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9:10AM – 10:00PM

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# Today's Agenda

- President Biden as “Regulator-in-Chief”
  - Policymaking without Congress
  - Regulatory Mandates in Regulatory Reform Clothing
- Marble Cake of Regulatory/Legal Initiatives
- Snapshot of Key Regulatory Challenges
  - Used Drum Management & Reconditioning
  - TSCA Update
  - PFAS Update
  - OSHA Update
  - Extended Producer Liability
  - Non-Compete Update



# President Biden as the “Regulator-in-Chief”

- Since World War II, Presidents have increasingly used the administrative state to advance their policy agendas.
  - Deference afforded by courts to agencies under *Chevron* Doctrine
  - Congressional gridlock has enhanced White House policymaking through rules/regulations
- The Biden Administration has continued this trend and has amplified it by employing a “whole-of-government” approach to its policy priorities.
  - Directs federal departments and agencies to work together to carry out broad policy goals.

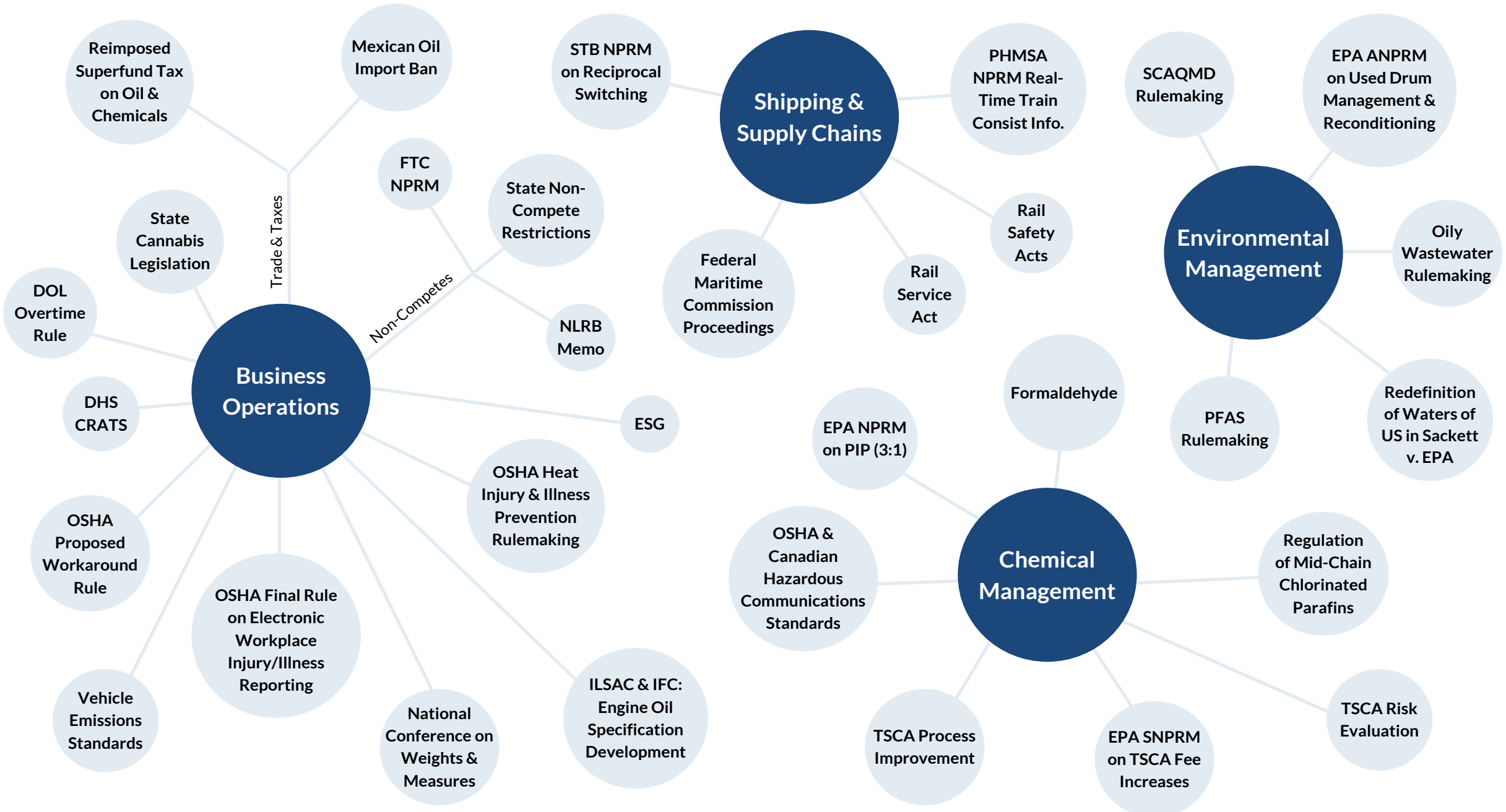
# New OMB Circular A4

- A new circular A4 was released by the Biden Administration's Office of Management & Budget in November 2023.
- Little-known but important guidance document that outlines how federal agencies should analyze the regulations that they propose, especially calculating costs and benefits.
- Notable changes in the new circular highlight President Biden's aggressive regulatory strategy. Agencies are now:
  - Advised to consider "distributional effects" of proposed regulations and favor placing federal money into lower income segments of society over high income segments.
  - Directed to lower the "discount rate" in the cost-benefit analysis, which encourages agencies to issue rules with long term benefits even if they will require high up-front costs.
- Possible elimination of OMB as "gatekeeper" and now as "enabler."

# Increasing Cost of Regulatory Compliance

The most recent study done on the subject by the National Association of Manufacturers (NAM) found:

- An average U.S. company spends \$9,991 per employee to comply with federal regulations each year.
- This figure nearly doubles for U.S. manufactures (\$19,564) and triples for small manufactures (\$34,671).



# ANPRM on Used Drum Management and Reconditioning



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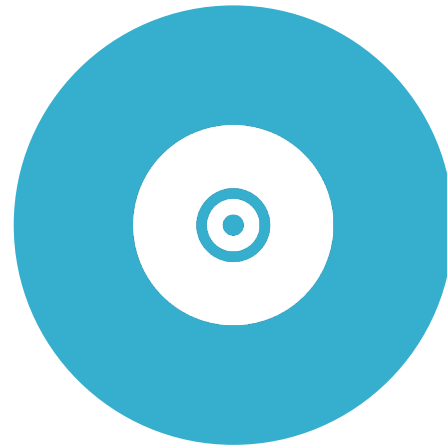
- In August 2023, EPA released an advanced notice of proposed rulemaking indicating that the Agency is considering:
  - Redefining the RCRA-empty container provision by lowering or eliminating the current one-inch residue threshold for 55-gallon drums and the 3% by weight limit for IBCs.
  - Add a requirement for generators to rinse used or empty drums and totes prior to their shipment to reconditioners.
  - Requiring generators and transporters to adopt more stringent packaging and inspection practices.
- ILMA submitted extensive comments arguing that RCRA empty container provision should not be amended and that EPA's concerns can be effectively addressed by working with industry to develop best practices guidance.
- No timeline provided in the Fall 2023 Unified Agenda but EPA officials indicated that they will be reviewing comments into the new year.



# TSCA Update



TSCA FEE INCREASES



CDR SUBMISSIONS DUE



UPDATES TO THE NEW  
CHEMICALS PROGRAM

## SNPRM on TSCA Fee Increases

- In November 2022, EPA released a supplemental proposal to its 2021 proposed updates and adjustments to the 2018 fees rule established under the Toxic Substances Control Act (TSCA).
- Pre-Manufacture Notices (PMNs) & significant new use rules (“SNURs”) would increase \$19,020 to \$45,000 (136% increase).
- Elimination of risk evaluation consortium for small businesses.
- The 2023 Omnibus Appropriations Bill increased funding for the TSCA program by \$20 million.
- The 2023 Fall Regulatory Agenda indicates that a final rule will be released February 2024.

# Updates to TSCA New Chemicals Regulations

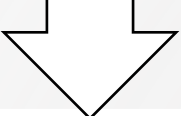
- In May 2023, EPA released an NRPM proposing updates to regulations governing the TSCA New Chemicals program. Key changes include:
  - Codify “review & determination” requirement imposed by the 2016 Lautenberg amendments.
  - Mandate that review & determination process include a pre-screen process.
  - Require PMN submissions to include information on:
    1. Relevant physical and chemical properties of the chemical – including surface tension and ultraviolet-visible absorption, aspect ratio, thickness, and number of layers or walls for nanomaterials, and environmental fate characteristics
    2. Classification based on functional codes of the Organization for Economic Co-Operation and Development
    3. Disclose where chemical will be manufactured, processed, or used
    4. List exposure risks to workers and the environment and preventative measures that will be employed.
- The 2023 Fall Regulatory Agenda indicates that a final rule will be released April 2024.

# CDR Submissions

- CDR submissions are due in 2024 (between June 1, 2024 to September 30, 2024)
- The TSCA “Chemical Data Reporting” (CDR) rule requires manufacturers (including importers) to provide EPA with basic information on the chemicals that they produce / import.
  - Generally, reporting is required if an entity meets production thresholds (25,000 lbs/year or 2,500 lb/year for certain chemicals).
  - No reporting required for:
    - Chemical is not subject to TSCA (e.g., food, drug, pesticide etc.)
    - Water and naturally occurring substances
    - Non-isolated intermediates (e.g., article, impurities, or byproducts destined for certain commercial uses)
    - If entity’s sales are less than \$12 million.
- Manufacturers (including importers) will need to report full manufacturing, processing, and use information for 2023 only and production volume information for calendar years 2020, 2021, 2022, and 2023.

## PFAS Update

EPA's "PFAS Strategic Roadmap," released in 2021, set out the Biden Administration's commitment to combat PFAS.



Since then, EPA released several rulemaking actions targeting PFAS. Three are particularly relevant to the metal working fluids industry:

**Final Rule on TSCA  
Reporting & Recordkeeping  
Requirements for PFAS**

**Final Rule Changing TRI  
Reporting Requirements  
for PFAS**

**ANPRM Designating PFAS  
as CERCLA Hazardous  
Substances**

## Final Rule on TSCA Reporting & Recordkeeping Requirements for PFAS

- On October 11, 2023, released a final rule that will require all manufactures (including importers) of PFAS and PFAS-containing articles to report information to the Agency on PFAS uses, production volumes, disposal, exposures, and hazardous since 2011.
- Effective November 13, 2023
- EPA is seeking more information

## Final Rule Changing TRI Reporting Requirements for PFAS

- October 31, 2023, EPA released a final rule that adds PFAS to the reporting requirements under the Emergency Planning & Community Right-to-Know Act (EPCRA) and Pollution Prevention Act (PPA).
- Eliminates a previous exemption that excused manufactures from reporting if their PFAS use was less than 100 pounds.
- Effective November 30, 2023, applies for reporting year beginning January 1, 2024.
  - First reports will be due July 1, 2025
- EPA will use information to get a better idea of PFAS releases and waste management.

# ANPRM Designating PFAS as CERCLA Hazardous Substances

- On October 31, 2023, EPA published an advance notice of proposed rulemaking that requested comment on potentially listing additional PFAS compounds as “hazardous substances” under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA / Superfund Law).
  - Builds on proposed rule that was released in 2022 that seeks to designate two types of PFAS -- perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) -- as CERCLA hazardous substances.
  - Final rule expected to be released in March 2024
- Designating PFAS compounds as CERCLA hazardous substances would make any entity handling CERCLA-designated PFAS liable for the recovery and remediation costs of PFAS releases or threatened releases.
  - Liability extends to current and former owners and operators of facilities where PFAS was released or disposed as well as generators, arrangers, and transporters.
  - Major financial ramifications.

# OSHA Update

1. Potential Rule on Heat Injury & Illness Prevention
2. Proposed Walkaround Rule
3. Updates to the Hazardous Communication Standard



# Potential Rule on Heat Injury & Illness Prevention

- October 2021: OSHA released an ANPRM asking stakeholders whether the Agency should adopt a national heat injury and illness prevention standard for indoor and outdoor workplaces.
- May 2023: NACOSH Work Group recommended that OSHA should consider requiring businesses to adopt including written heat illness plans, employee training, and workplace temperature controls.
- August 2023: OSHA convened a Small Business Advocacy Review Panel (“SBREFA” Panel) as required by law for potential regulations that will likely have a significant impact on small businesses.
  - The SBREFA panel consisted of three government agencies including OSHA and heard feedback from small business representatives (“SERs”) on the potential heat stress rulemaking.
  - OSHA provided SERs with a potential regulatory framework
- November 2023: Panel published report that largely recommended rulemaking.
- The Fall 2023 regulatory agenda indicates that OSHA will begin reviewing the SBREFA Panel’s report in January 2024.
  - A proposed rule may be released Q2-Q3 2024

# Potential Rule on Heat Injury & Illness Prevention

## What will it look like?

- OSHA released a potential regulatory framework for the SBREFA panel process
  1. Adopt written heat illness policies and procedures
  2. Define what constitutes a heat hazard exists
  3. Provide administrative controls such as drinking water and rest breaks
  4. Provide engineering controls such as fans or air-conditioned cool-down areas
  5. Heat illness and prevention training
  6. Monitor weather conditions to determine when there is a heat hazard
- May apply to both indoor and outdoor workplaces
- Will apply to the manufacturing sector (N# 31-33)

# OSHA Worker Walk Around Rule

- Proposed in August 2023
- Would allow employees at *non-union* workplace to request union rep on OSHA walk around inspection
  - OSHA inspector supposed to determine whether 3<sup>rd</sup> party “is reasonably necessary” to aid in the inspection
  - Part of Biden administration effort to aid unions
- Problems – A Lot
  - Would allow *any* 3<sup>rd</sup> party rep (e.g., plaintiff’s lawyer, activist)
  - No limit on number of employee requests
  - Legitimize trespassing?
  - No ability of employer to restrict/control 3<sup>rd</sup> party’s activities onsite

# Hazard Communication

- OSHA Amendments to 2012 HCS Are At OMB for Review
  - Next-to-last rulemaking step
  - Do not know changes made by OSHA based on public comments
  - Will be significant when published
- Health Canada amended its Hazardous Products Regulation on 01/04/2023
  - Align with GHS 7<sup>th</sup> edition and parts of 8<sup>th</sup> edition
  - 3-year transition period ending on 12/14/2025
    - During transition period, can comply with “old” or “new,” but not combination
- Single SDS for U.S. and Canada?

# Extended Producer Responsibility for Plastic Packaging

- EPR Is Not New
  - Shift funding for municipal recycling programs to manufacturer/brand owner
  - Increase recycling rates
  - Force reduction in packaging types and plastics in general
  - Force reduction in use of toxic chemicals
  - Fund environmental justice programs and projects
- States with EPR Laws
  - Maine
  - Oregon
  - California
  - Colorado

# EPR For Plastic Packaging

- Are Lubricants Covered?
  - Maine — “Yes” unless exempted by rule
  - Oregon — “Probably” as there is an exemption process
  - Colorado — Pathway from “maybe”
  - California — “Probably” with CalRecycle exemption
- Review of State EPR Programs
- Expect 1 or 2 States to Enact EPR Laws Each Year
  - California likely model?
  - Other steps (PCR, Labeling and Bans)
    - PFAS-Inhance Litigation

# EPR For Plastic Packaging

- Questions
  - Participate in dominant PRO
  - Develop alternate collection program
    - NLCRC pilot program in Atlanta
    - Need data on sales volumes, packaging types and weights
  - How do you achieve consistency across country while reducing structural costs
  - Level of political engagement needed?

# Federal Restrictions of Non-Competes

- January 2023: The Federal Trade Commission (FTC) proposed a rule that, if enacted, will prohibit employers entering and maintaining – virtually – all non compete agreements with employees. The final rule is expected to be released in April 2024.
  - ILMA submitted extensive comments on the rulemaking.
  - According to the Fall 2023 Regulatory Agenda, FTC is conducting a review of public comments and policy analysis in December 2023.
  - Final rule expected in 2024

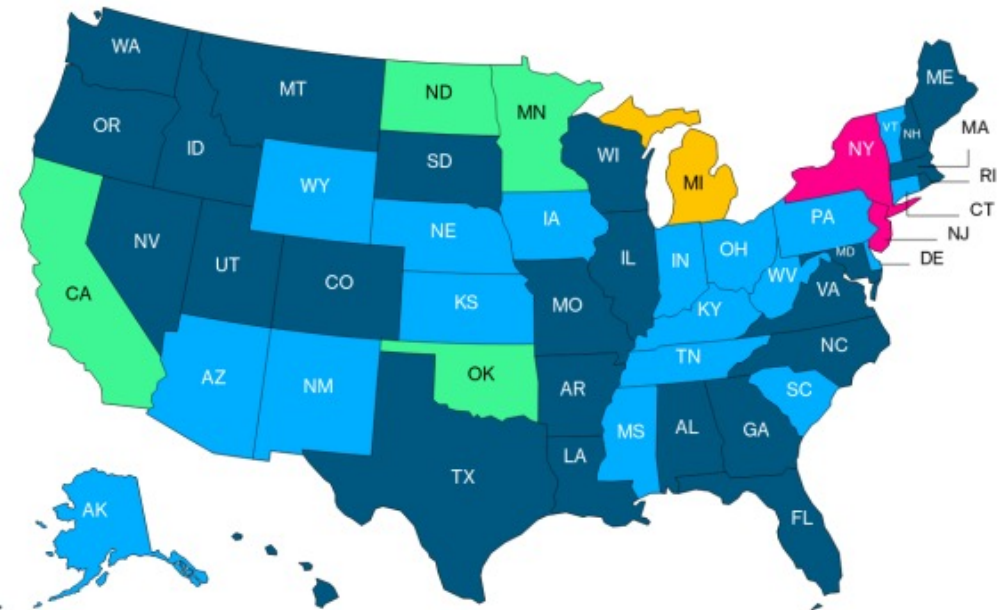


# State Restrictions of Non-Competes

- January 2024: Currently, non competes are permitted (to varying degrees) in 46 states.
- On July 1, 2023, Minnesota joined CA, ND, and OK in banning them in most cases.
- New York might be the fifth state to institute a ban. The state legislature passed a ban in June. However, it has not yet been signed Governor Hochul.
  - There are disputes between labor and employers over whether the law should permit non-competes for high-salaried employees (\$250,000+).

## Most States Regulate Noncompetes, More Join in 2023

- Bans most noncompetes
- Has governing statute
- Has no governing statute
- Legislation being considered
- Has governing statute, considering ban



Source: Bloomberg Law. Minnesota's law is effective July 1, 2023.

Bloomberg



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Questions?

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