



NMA

**National
Mining
Association**



March 6, 2022

ENVIRONMENT & LANDS COMMITTEE MEETING

AGENDA

Welcome and Introductions

Safety Share

NMA Staff Presentation

- View from Capitol Hill
- View from the White House
- Subcommittee Updates

Questions



SAFETY SHARE

Out-of-Hospital Cardiac Arrest

Sudden Cardiac Arrest
is a national public
health crisis.



affects

1,000 people
a day

strikes all ages



Red Cross
Mobile Apps

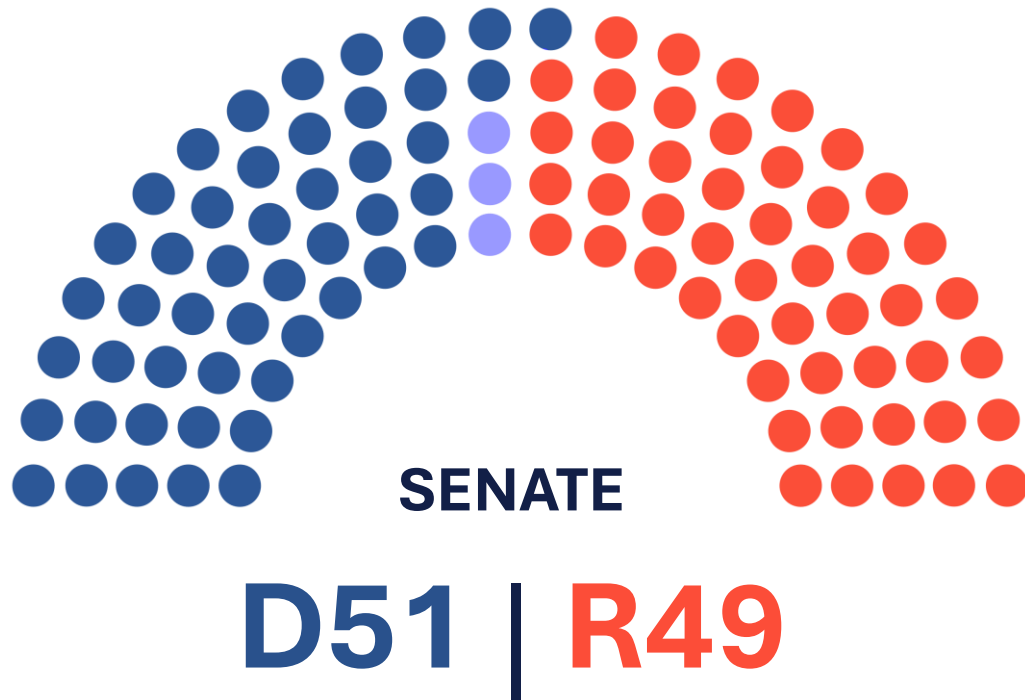


VIEW FROM CAPITOL HILL

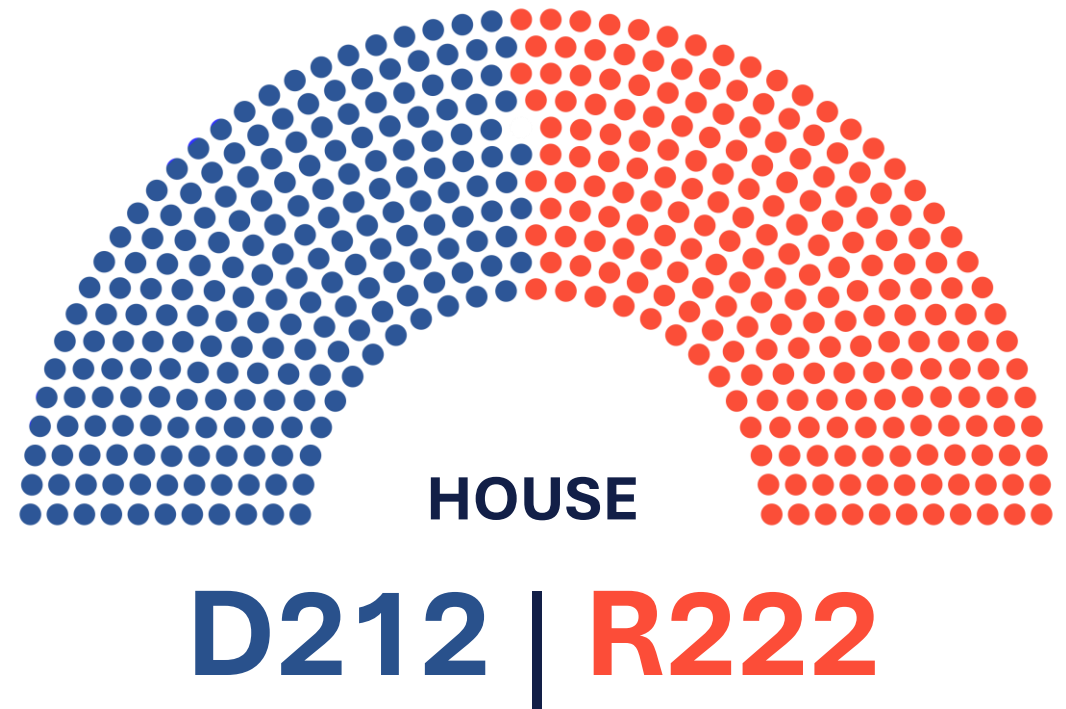


VIEW FROM CAPITOL HILL

Post-Midterms Margins



Control has shifted to the Democrats for the 118th Congress, replacing the previous 50-50 split.



Control has shifted to the Republicans for the 118th Congress, but the slim margin is still in place.

VIEW FROM CAPITOL HILL

Senate Election 2024: 11 Republicans | 24 Democrats

- Initial Republican Targets: Manchin, Tester, Brown
- No Democratic Pick-Up Opportunities in Republican Races



Sen. Barrasso (R-WY)



Sen. Brown (D-OH)



Sen. Heinrich (D-NM)



Sen. Kaine (D-VA)



Sen. Manchin (D-WV)



Sen. Romney (R - UT)



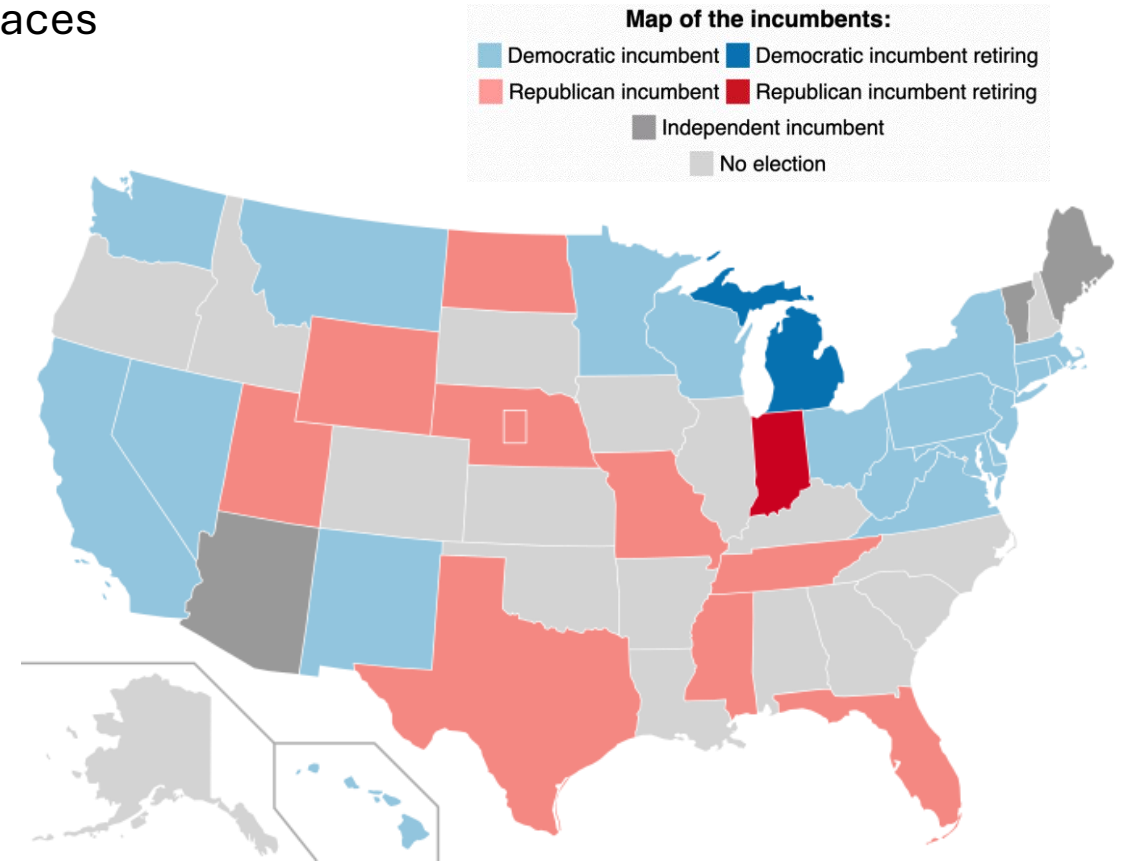
Sen. Rosen (D - NV)



Sen. Sinema (D - AZ)



Sen. Tester (D - MT)



VIEW FROM CAPITOL HILL

House Election 2024

- The White House plans to target 18 House Republicans from districts Biden won:



Rep. Schweikert (R-AZ)



Rep. Ciscomani (R-AZ)



Rep. Duarte (R-CA)



Rep. Valadao (R-CA)



Rep. Garcia (R-CA)



Rep. Kim (R-CA)



Rep. Steel (R-CA)



Rep. Bacon (R-NE)



Rep. Kean (R-NJ)



Rep. LaLota (R-NY)



Rep. Santos (R-NY)



Rep. D'Esposito (R-NY)



Rep. Lawler (R-NY)



Rep. Molinaro (R-NY)



Rep. Williams (R-NY)



Rep. Williams (R-NY)



Rep. Fitzpatrick (R-PA)



Rep. Kiggans (R-VA)

117th Congress: 222 Democrats | 213 Republicans

118th Congress: 222 Republicans | 212 Democrats

VIEW FROM CAPITOL HILL

New Leadership



House

Energy & Commerce

Rep. Cathy McMorris Rodgers (R-WA), Chair
Rep. Frank Pallone (D-NJ), Ranking Member

Subcommittee on Environment, Manufacturing, & Critical Materials

Rep. Bill Johnson (R-OH), Chair

Subcommittee on Energy, Climate, & Grid Security

Rep. Jeff Duncan (R-SC), Chair

Committee on Natural Resources

Rep. Bruce Westerman (R-AR), Chair

Subcommittee on Energy and Mineral Resources

Rep. Pete Stauber (R-MN), Chair

Committee on Education & the Workforce

Rep. Virginia Foxx (R-NC), Chair

Senate

Energy and Natural Resources Committee

- Sen. Joe Manchin (D-WV), Chair
- Sen. John Barrasso (R-MT), Ranking Member

Subcommittee on Public Lands, Forests, and Mining

- Sen. Catherine Cortez Masto (D-NV), Chair
- Sen. Mike Lee (R-UT), Ranking Member

Committee on Health, Education Labor & Pensions

- Sen. Bernie Sanders (D-VT), Chair
- Sen. Bill Cassidy (R-LA), Ranking Member

VIEW FROM CAPITOL HILL

Mining's Voice on Capitol Hill | Committee Testimony



VIEW FROM CAPITOL HILL

Oversight Plans: House Energy and Commerce Committee

NATIONAL ENERGY POLICY

- ▶ The Committee will examine issues relating to national energy policy, including U.S. policies that relate to the exploration, production, distribution of **coal**. The Committee will conduct oversight over the impact the administration's energy policies are having on supply chains, **increasing dependence on China**

ELECTRICITY SYSTEM AND ELECTRIC UTILITY MARKETS

- ▶ The Committee will undertake a review of the nation's electricity system. It will also continue to examine the activities of the Department of Energy (DOE) and Federal Energy Regulatory Commission (FERC) with respect to Environmental Protection Agency (EPA) regulations affecting **reliability of the electricity grid**

SOLID AND HAZARDOUS WASTE MANAGEMENT

- ▶ The Committee will review EPA implementation of various regulatory programs established under the most recent administration, including regulations regarding **coal ash**

**AUTHORIZATION AND OVERSIGHT PLAN
OF THE COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES, 118TH CONGRESS**

Rule X, clause 2(d) of the Rules of the House requires each standing Committee to develop an oversight plan for the two-year period of the Congress and to submit the plan to the Committee on Oversight and Reform and to the Committee on House Administration not later than March 1 of the first session of the Congress.

This is the oversight plan of the Committee on Energy and Commerce for the 118th Congress. It includes areas where the Committee expects to conduct oversight during the 118th Congress, subject to staff and resource limitations, but does not preclude oversight or investigation of additional matters. The Committee will continue to consult with other committees that have jurisdiction over the same or related laws, programs, or agencies with the objective of ensuring maximum coordination and cooperation. Specifically, the Committee will continue to work with other committees to facilitate expiring programs, coordinate with the Congressional Budget Office regarding lapsed authorizations and upcoming expirations, and hold member and staff-level meetings with relevant committees and House and Senate conferences.

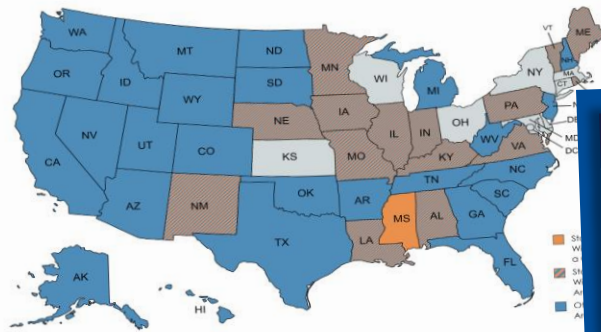
During the 118th Congress, the Committee on Energy and Commerce will hold hearings and conduct rigorous oversight over matters within its jurisdiction. The Committee will conduct thorough oversight, reach conclusions based on an objective review of the facts, and treat witnesses fairly. The Committee will request information in a responsible manner that is calculated to be helpful to the Committee in its oversight responsibilities. The Committee's oversight functions will focus on 1) cutting government spending through the elimination of waste, fraud, and abuse; and 2) ensuring laws are adequate to protect the public interest or are being implemented in a manner that protects the public interest, without stifling economic growth. The Committee will use the information it collects through its oversight to inform the reauthorization of certain lapsed programs within its jurisdiction.

VIEW FROM CAPITOL HILL

Environmental Protection Agency Oversight

STATES IMPACT BY PROPOSED DISAPPROVAL OF REGIONAL HAZE SIPS

+ Corresponding FIP threat



RELIABILITY IMPACTS OF PENDING EPA RULES

Interstate Transport Rule

SPP:
8,184 MW by 12/2026
(37% of Coal Fleet)
ADDED TO UNITS SLATED FOR PRE-2030 RETIREMENT:
37% of coal capacity will be lost

MOUNTAIN WEST:
8,892 MW by 12/2026
(38% of Coal Fleet)
ADDED TO UNITS SLATED FOR PRE-2030 RETIREMENT:
44% of coal capacity will be lost

ERCOT:
7,867 MW by 12/2026
(55% of Coal Fleet)
ADDED TO UNITS SLATED FOR PRE-2030 RETIREMENT:
55% of coal capacity will be lost

NOTE:
These estimates do NOT include SCR-controlled units that are also at risk of retiring due to the Transport Rule FIP's stringent & dynamic budget setting process, caps on banking & the daily max NOx emission rate. See does this capture retirements due to new interpretations of the CCR Rules EPA is attempting to impose on the states (see this is the low end of impact).



RELIABILITY IMPACTS OF PENDING EPA RULES

CCR ACTIONS

SPP:
882.3 MW

Mountain/Southwest:
3,467.7 MW

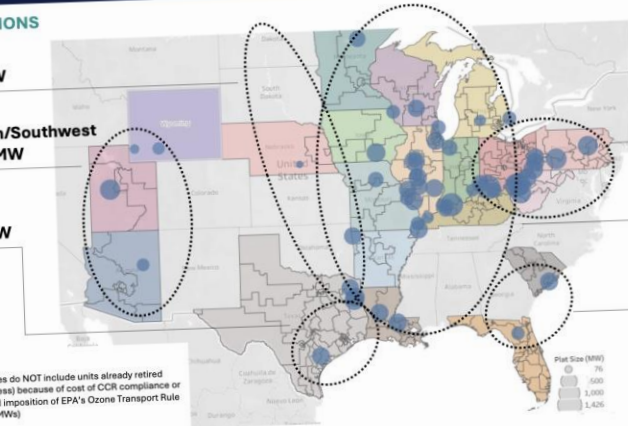
ERCOT:
3,934 MW

PJM:
17,768.2 MW

MISO:
12,576.9 MW

SOUTHEAST:
894.7 MW

NOTE:
These estimates do NOT include units already retired (or in the process) because of cost of CCR compliance or the threatened imposition of EPA's Ozone Transport Rule FIP (> 50,000 MWs)



VIEW FROM CAPITOL HILL

Oversight Plans: House Committee on Natural Resources

MINERAL SECURITY

- ▶ The Committee will conduct aggressive oversight of **domestic hardrock mineral resources**, including critical minerals, **especially regarding the nation's current and planned production on federal lands**. The Committee will also review ways to responsibly **increase production** through legislation. As a necessary part of ensuring mineral security, the **Committee will conduct oversight of the Biden administration's actions to withdraw, delay, and otherwise stymie hardrock mineral development on federal lands**. Additionally, the Committee will closely monitor the actions of the Department of the Interior's **Interagency Working Group** on mining reform

COAL MINING REGULATIONS and LEASING

- ▶ The Biden administration and the Department of the Interior continue to wage a **war on coal**. The Committee will conduct extensive oversight of the Biden administration's actions regarding the **federal coal program**, such as the **reinstatement of the leasing moratorium** and **protracted delays in permit issuance**, that have stifled coal mining, production, and use

US GEOLOGICAL SURVEY (USGS)

- ▶ The Committee supports programs at the USGS for the accurate siting of hardrock minerals and other resources, such as the **Earth MRI program**, as well as **mapping** programs

30x30

- ▶ The Committee will conduct **oversight of the Biden administration's 30x30 Initiative**

COMMITTEE ON NATURAL RESOURCES

Authorization and Oversight Plan

118th Congress



Chairman Bruce Westerman

VIEW FROM CAPITOL HILL

Westerman-Stauber Permitting Legislation



**Rep. Bruce Westerman
R-Ark.**



**Rep. Pete Stauber
R-Minn.**

117TH CONGRESS
2D SESSION

H. R.

(Original Signature of Member)

To streamline hardrock mine permitting on Federal lands, support technological and scientific advancements for mineral development, expand the mining workforce, track global supply chains, strengthen domestic refining and processing capacity, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. WESTERMAN introduced the following bill; which was referred to the Committee on _____

A BILL

To streamline hardrock mine permitting on Federal lands, support technological and scientific advancements for mineral development, expand the mining workforce, track global supply chains, strengthen domestic refining and processing capacity, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3

117TH CONGRESS
2D SESSION

H. R.

(Original Signature of Member)

To improve the permitting process for mining on Federal land, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. STAUBER introduced the following bill; which was referred to the Committee on _____

A BILL

To improve the permitting process for mining on Federal land, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 **SECTION 1. SHORT TITLE.**
4 This Act may be cited as the "Permitting for Mining
5 Needs Act of 2022".
6 **SEC. 2. DEFINITIONS.**

Congress of the United States
Washington, DC 20510

February 8, 2023

The Honorable Bruce Westerman
Chair
Committee on Natural Resources
U.S. House of Representatives

The Honorable Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce
U.S. House of Representatives

Dear Chairs Westerman and Rodgers,

As members of the Critical Materials Caucus, we write to request your leadership in advancing bipartisan, commonsense reforms and investments to reduce our economic dependence on foreign sources and build out clean energy technologies to meet our nation's goals. We stand ready to work with your Committees and all Members to advance these critical reforms.

We believe that there are numerous policies that lawmakers of both parties can agree on, such as fully implementing existing expedited permitting authorities like "one federal decision," timely approvals for low-carbon energy projects, investments in domestic development of critical materials, and improvements to grid and transmission infrastructure. In particular, there are several specific proposals that we stand ready to work with you on, including:

- **Rare Earth Magnet Manufacturing Production Tax Credit Act:** A bill introduced by Reps. Swalwell and Reschenthaler to create a production tax credit for rare earth magnets that are produced in the United States. Rare earth magnets are used in military weapons, electric vehicles, and electronics, but 90 percent of these magnets are currently produced in mainland China.
- **Permit Reform In Mining for Energy and Defense (PRIMED) Act:** A bill introduced by Reps. Slotkin and Walz to add critical mineral projects financed under the Defense Production Act to the Federal Permitting Improvement Steering Council's permitting dashboard and expedited review process. This would support domestic production of critical minerals the Administration has indicated are important to national and economic security.
- **The Electric Power Infrastructure Improvement Act:** A bill introduced by Rep. Horsford, which would create an investment tax credit to help promote construction of regionally significant transmission projects across the country.
- **Elements of the Reclaiming American Rare Earths (Rare) Act:** A bill introduced by Reps. Gonzalez and Gooden to drive domestic production and reduce America's dependence on China for rare earth minerals used to build the technology that keeps our country safe and connected. Although we are grateful that the Inflation Reduction Act included some components of the RARE Act and set the stage for the U.S. and its trade partners to make a more significant contribution to the production of essential minerals, we would like to see the remaining provisions of the RARE Act also move forward in Congress.
- **Developing a National Stockpile for Critical Materials:** Although the Defense Logistics Agency manages critical materials related to national security, there is no legislative requirement to ensure that the United States maintains sufficient critical materials for its national security needs. Congress should consider legislation, such as a requirement in the coming National Defense Authorization Act, to improve Congressional oversight and public accountability.

We would welcome discussions on how best to incorporate the Critical Materials Caucus's priorities into bipartisan reform legislation originating in your committees. Thank you for your leadership and consideration.

Sincerely,

Eric Swalwell
Member of Congress

John Garamendi
Member of Congress
Ranking Member,
Subcommittee on Readiness

Vicente Gonzalez
Member of Congress

Chrissy Houlahan
Member of Congress

Steven Horsford
Member of Congress

Henry Culler
Member of Congress

Dina Titus
Member of Congress

Elissa Slotkin
Member of Congress

VIEW FROM CAPITOL HILL

Appropriations & Oversight

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**AMENDMENT TO DIVISION E OF RULES
COMMITTEE PRINT 117-55
(INTERIOR AND ENVIRONMENT APPROPRIATIONS
DIVISION)
OFFERED BY MR. NEWHOUSE OF WASHINGTON**

At the end of division E (before the short title), insert the following:

1 SEC. _____. None of the funds made available by this
2 division may be used to develop, propose, finalize, imple-
3 ment, enforce, or administer new regulations revising the
4 definition of the term "waters of the United States", as
5 used in the Federal Water Pollution Control Act (33
6 U.S.C. 1251 et seq.), during the period beginning on the
7 date of enactment of this Act and ending on June 30,
8 2023.

☒

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July 18, 2022 (10:50 a.m.) (8489876)

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**AMENDMENT TO DIVISION E OF RULES
COMMITTEE PRINT 117-55
(INTERIOR & ENVIRONMENT APPROPRIATIONS
DIVISION)
OFFERED BY MRS. HINSON OF IOWA**

At the end of division E (before the short title), insert the following:

1 SEC. _____. None of the funds made available by this
2 Act may be used for implementation or administration of
3 the rule entitled "Hazardous and Solid Waste Manage-
4 ment System: Disposal of Coal Combustion Residuals
5 From Electric Utilities; A Holistic Approach to Closure
6 Part A: Deadline To Initiate Closure" published by the
7 Environmental Protection Agency in the Federal Register
8 on August 28, 2020 (85 Fed. Reg. 53516) that results
9 in the closure of a coal-fired power plant.

☒

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July 18, 2022 (12:47 p.m.) (84958413)

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**AMENDMENT TO DIVISION E OF RULES
COMMITTEE PRINT 117-55
(INTERIOR AND ENVIRONMENT APPROPRIATIONS
DIVISION)
OFFERED BY MR. MCKINLEY OF WEST VIRGINIA**

At the end of division E (before the short title), insert the following:

1 SEC. _____. None of the funds made available by this
2 Act may be used by the Environmental Protection Agency
3 to deny requests from utilities for extensions of time to
4 comply with the requirements of paragraphs (1) and (2)
5 of section 257.103(f) of title 40, Code of Federal Regula-
6 tions, concerning coal combustion residuals.

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July 12, 2022 (10:46 a.m.) (84911911)

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**AMENDMENT TO DIVISION E
OF RULES COMMITTEE PRINT 117-55
OFFERED BY MR. MCKINLEY OF WEST VIRGINIA**

At the end of division E (before the short title), insert the following:

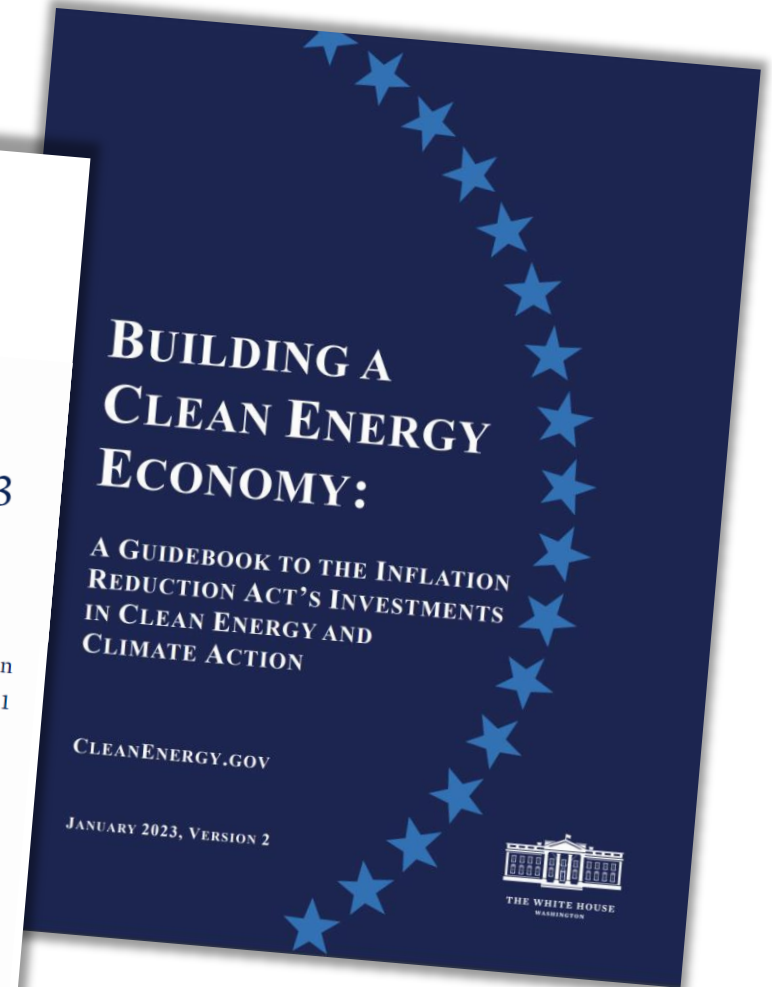
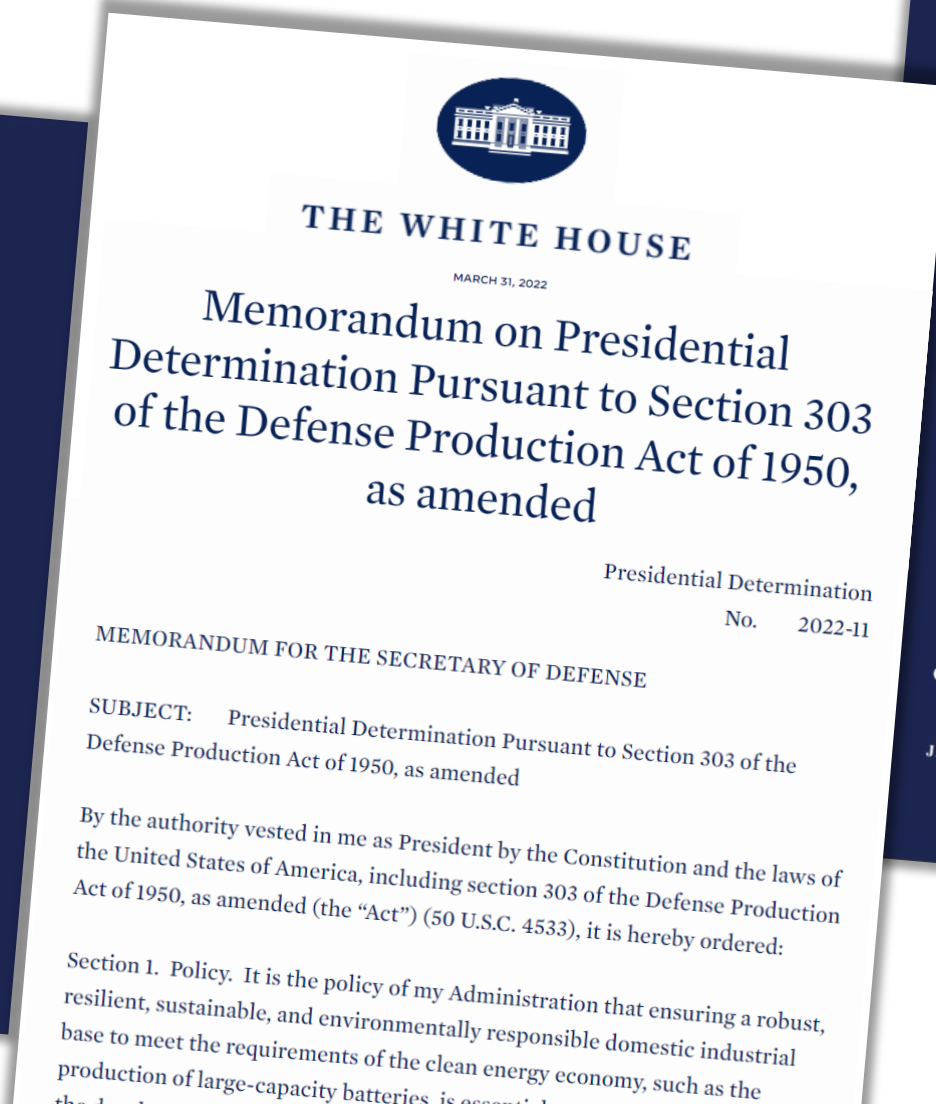
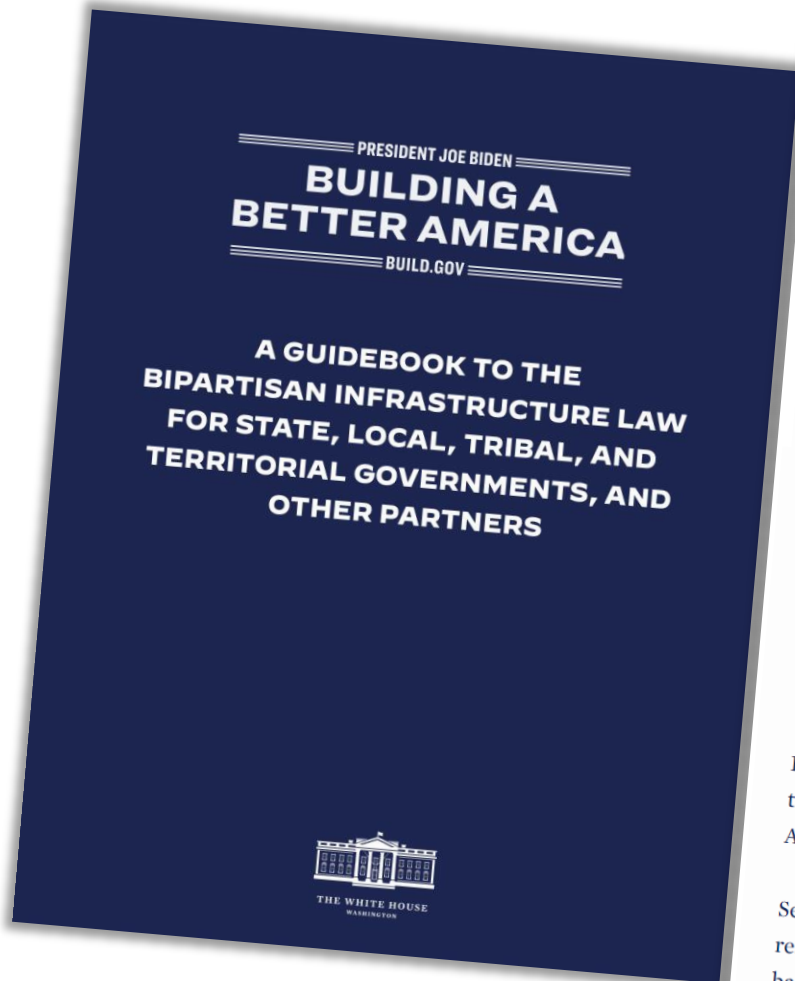
1 SEC. _____. None of the funds made available by this
2 Act may be used to finalize, implement, or enforce the pro-
3 posed rule titled "Federal Implementation Plan Address-
4 ing Regional Ozone Transport for the 2015 Ozone Na-
5 tional Ambient Air Quality Standard" published by the
6 Environmental Protection Agency in the Federal Register
7 on April 6, 2022 (87 Fed. Reg. 20036 et seq.).

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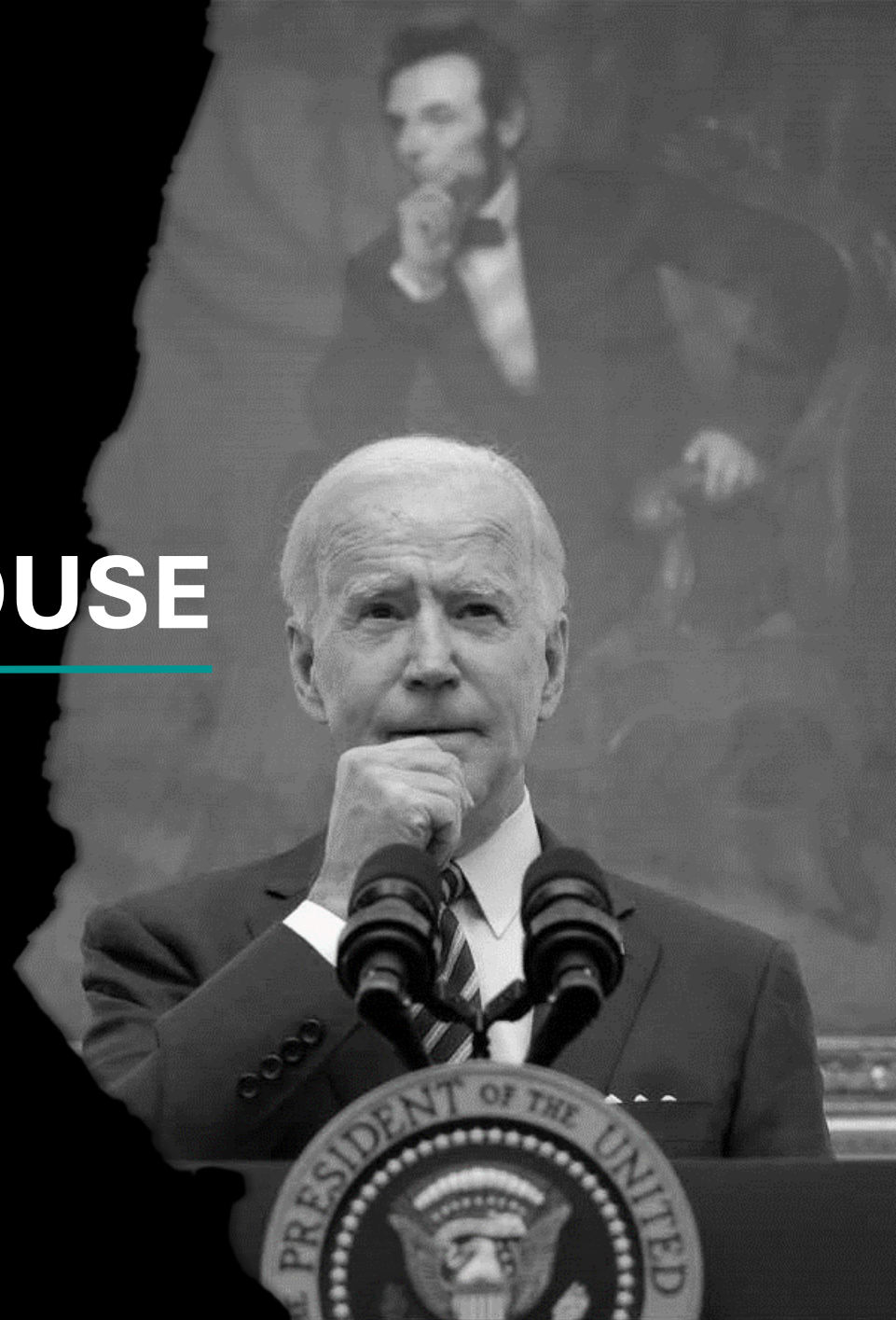
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VIEW FROM CAPITOL HILL

Funding

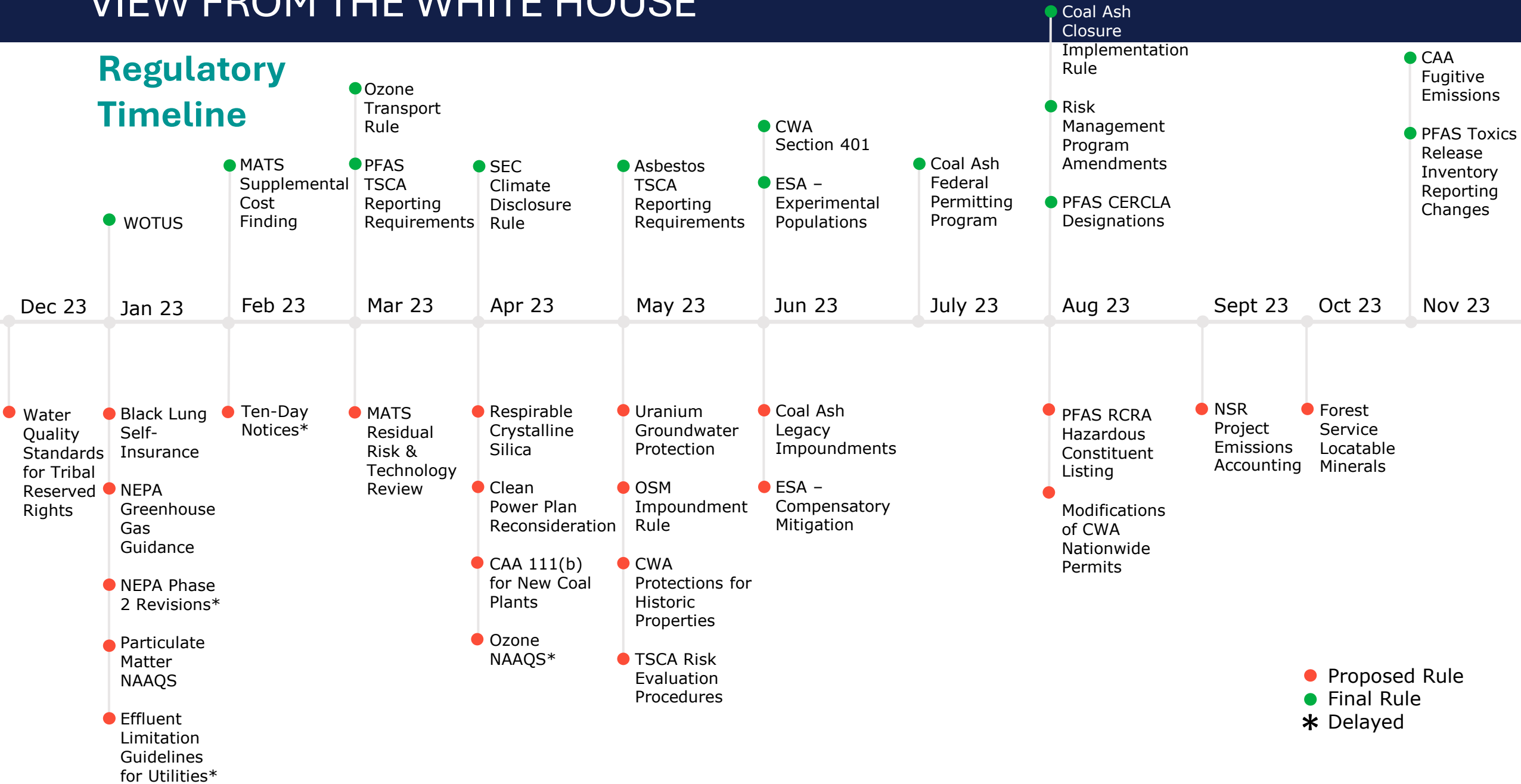


VIEW FROM THE WHITE HOUSE



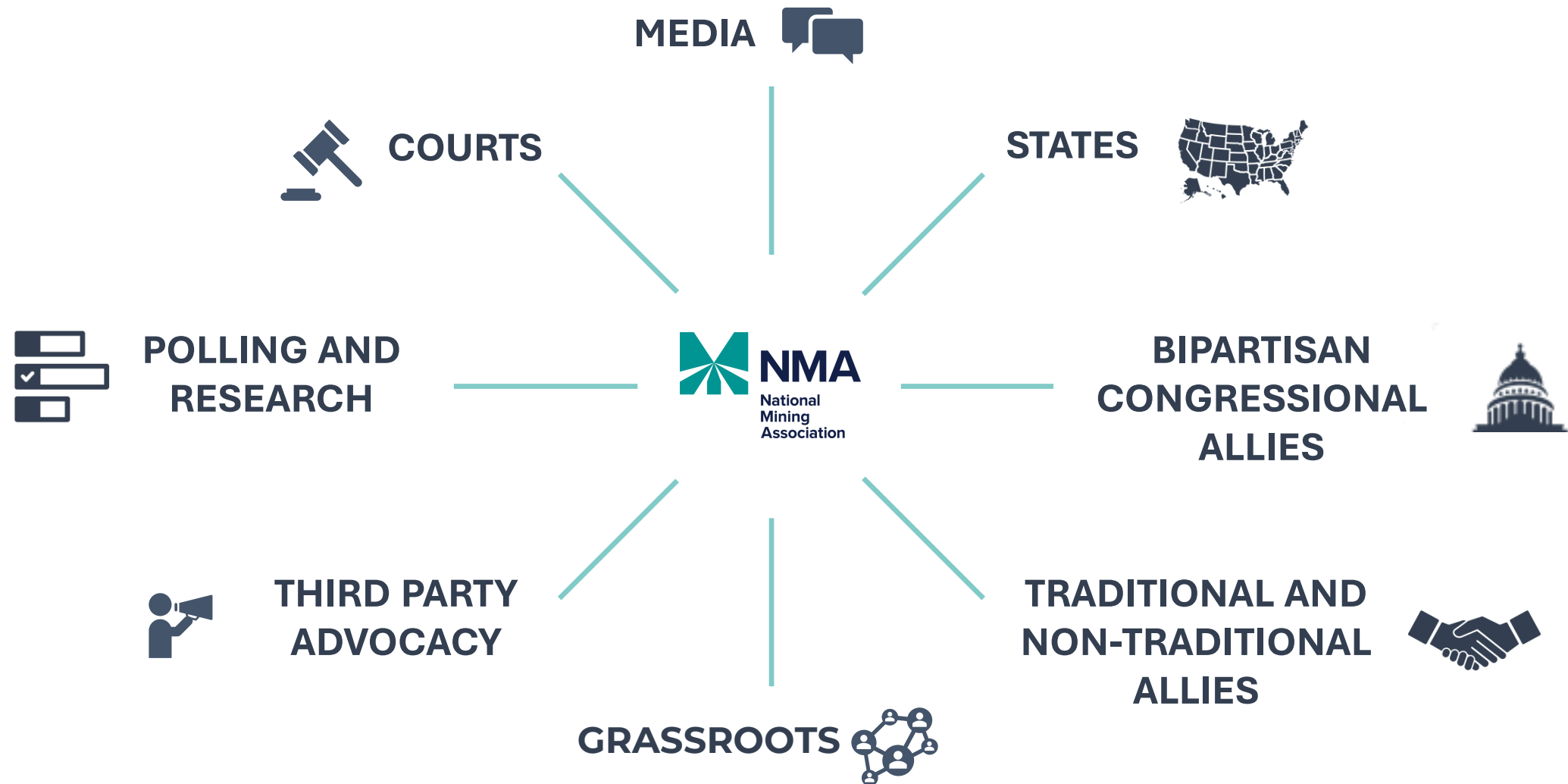
VIEW FROM THE WHITE HOUSE

Regulatory Timeline



VIEW FROM THE WHITE HOUSE

NMA Tools



VIEW FROM THE WHITE HOUSE

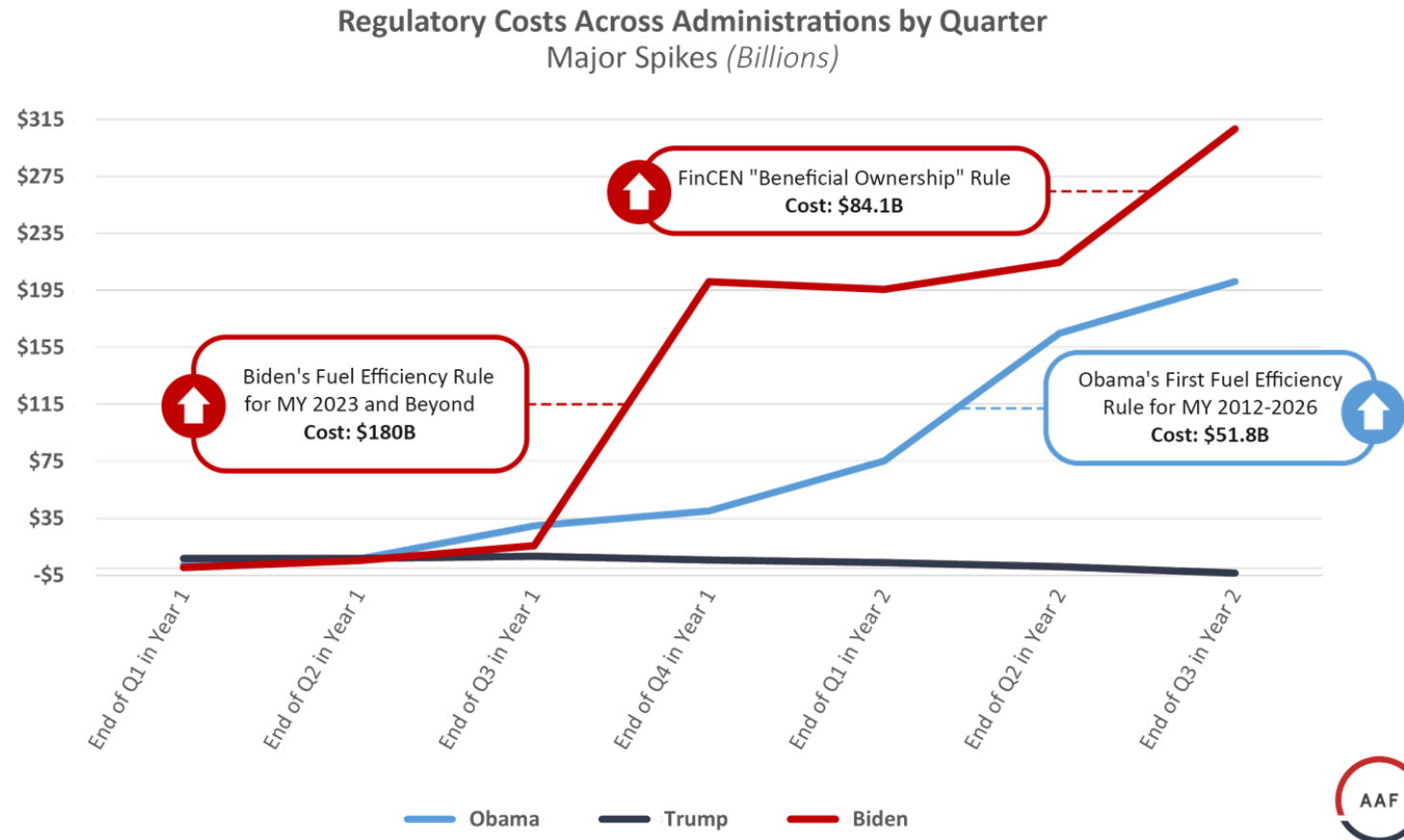
Regulatory Activity from Inauguration Day to February 24th

	FINAL RULES	FINAL RULE COSTS	PAPERWORK HOURS
BIDEN 2021	539	359.4B	218.9M
TRUMP 2017	595	6.88B	42.7M
OBAMA2 2009	768	208.9B	134.3M

Source: American Action Forum: <https://www.americanactionforum.org/week-in-regulation/cross-cutting-billion-dollar-proposals-highlight-short-week/>

VIEW FROM THE WHITE HOUSE

Regulatory Activity from Inauguration Day to February 24th



INDUSTRY-WIDE ISSUES



INDUSTRY-WIDE ISSUES

Rail Update

- NMA Quarterly Rail Survey
- Surface Transportation Board (STB) Rail Energy Transportation Advisory Committee
 - Nominations for three coal producer seats recently noticed
- NMA Testimony to STB in Dec. 2022 regarding UP's excessive use of embargoes
- Congressional and state engagement
- NMA Transportation Committee activity



Environmental Justice (EJ) and Civil Rights

- Permitting decisions
- Implementation of rulemakings
- Enforcement and litigation

- Development of cumulative impacts framework
- Development of civil rights compliance guidance
- Development of indicators of disparity elimination

- Get familiar with state and federal mapping and screening tools (e.g., EPA’s EJScreen)
- Get familiar with your state and local EJ and civil rights laws, regulations, and policies.
- Review best practices for community engagement



- Continue engagement with EPA and environmental justice advisory councils
- Comment when appropriate
- Engage with allied trade associations

LANDS SUBCOMMITTEE



LANDS SUBCOMMITTEE

White House Interagency Working Group (IWG)

IWG on Mining Regulations, Mining and Permitting:

Purpose To evaluate potential reforms to hardrock mining laws, regulations and permitting policies

- Scope**
- Conversion to leasing system
 - Imposition of royalties
 - Changes to financial assurance requirements
 - Use of international standards and best practices

- NMA Engagement**
- Numerous meetings with IWG members and subgroups
 - Extensive Aug. 2022 comments: importance of domestic mining and permitting reform to secure our mineral supply chains
 - Supplemental Nov. 2022 comments: importance of exploration activities, adoption of best practices and standards

- Report and Recommendations**
- Supposed to be completed by mid-Nov. 2022
 - Reports of potential Mar. 2023 release

LANDS SUBCOMMITTEE

Litigation and Mining Law

Key cases with potential to undermine rights conveyed by the Mining Law to owners of unpatented claims and the ability to use surface resources to further the development of those claims.

Rosemont

(Ancillary use/claim validity/interpretation of Forest Service regulations)

- Unfavorable decision from AZ district court, affirmed by 9th Circuit

Thacker Pass

(Ancillary use/claim validity/interpretation of Bureau of Land Management regulations)

- Remanded for failure to determine validity of claims where waste would be stored; appeal to 9th Circuit pending

Earthworks

(Millsites/fair market value/interpretation of Bureau of Land Management regulations)

- Favorable D.C. district court decision, appealed to D.C. Circuit; briefing 2023



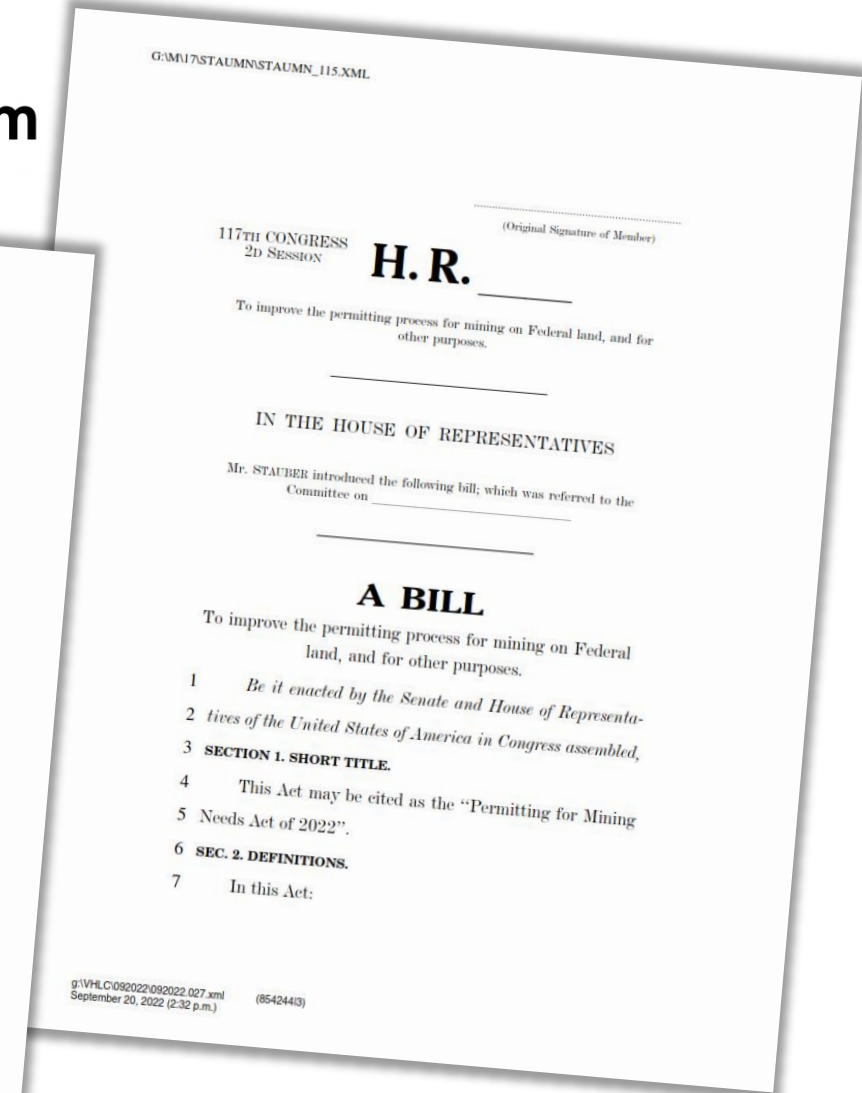
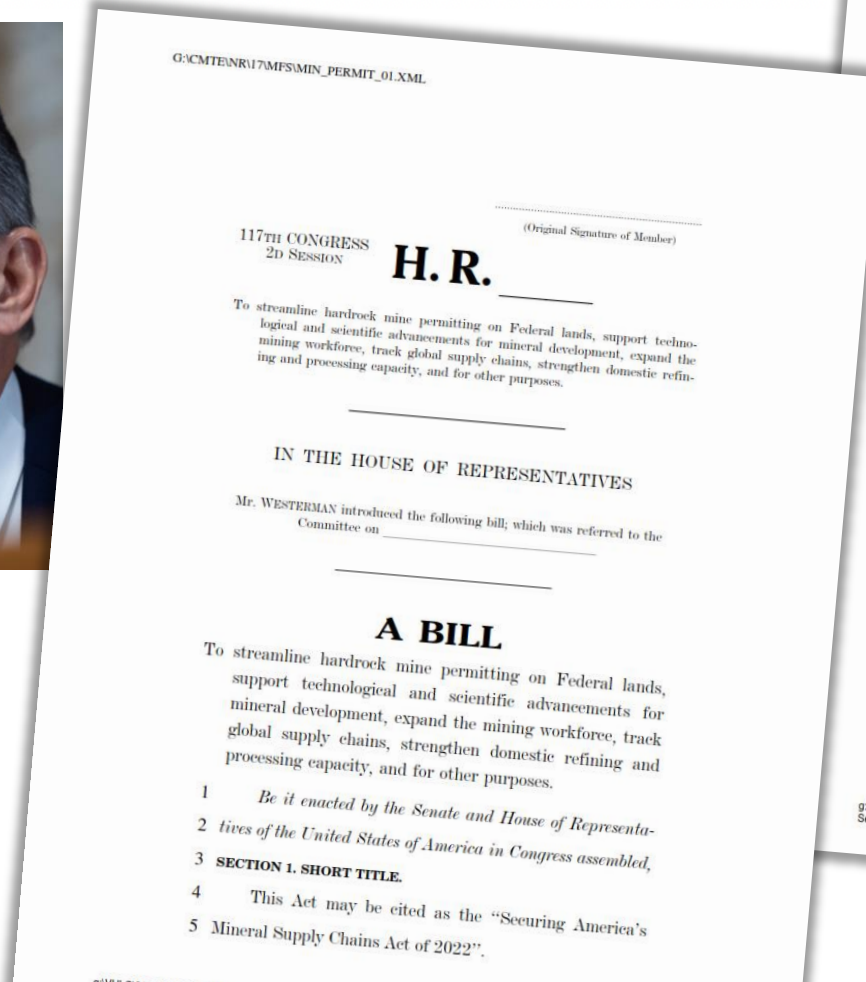
LANDS SUBCOMMITTEE

Permitting Legislation

E&E NEWS | E&E DAILY

Manchin, Westerman plot new push for permitting reform

By Emma Dumain, Kelsey Brugger, Jeremy Dillon | 02/02/2023 06:39 AM EST



LANDS SUBCOMMITTEE

National Environmental Policy Act (NEPA)

Council on Environmental Quality's NEPA Reforms

Phase 1

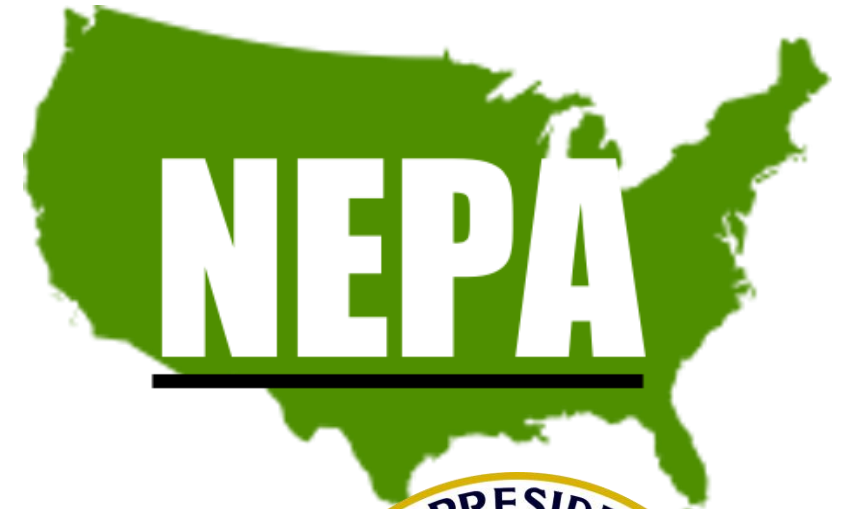
- Released earlier last year
- Largely nullified certain components of the 2020 NEPA reforms
- CBD already submitted a petition to strengthen Phase 1 rules

Phase 2

- Likely broader changes, including requirements to assess climate change in NEPA documents
- CEQ reached out to NMA to discuss phase 2, where NMA stressed the need for timely reviews and permitting decisions
- Currently at OMB for interagency review - NMA meeting with OMB on March 20

NEPA CEQ GHG Guidance

- Guidance to agencies on incorporation of GHG emissions in NEPA analyses
- Comment period extended until Apr. 10



LANDS SUBCOMMITTEE

Tribal Engagement and Policies

- Department of the Interior (DOI) released new guidance to improve stewardship of public lands, waters, and wildlife
- White House Tribal Summit-December 2022
 - Uniform Standards for Tribal Consultation
 - Additional Guidance on Indigenous Tribal Ecological Knowledge (ITEK)
 - Additional DOI and Forest Service consultation recommendations for hardrock mining on federal lands forthcoming
- Native American Graves Protection and Repatriation Regulations
- National Historic Preservation Act changes to Bulletin-38



WATER QUALITY SUBCOMMITTEE

WATER QUALITY SUBCOMMITTEE

Waters of the United States (WOTUS)

2023 Rule

- **Step One Finalized**
 - Final Rule published in Federal Register on Jan. 18, 2023
 - Set to go into effect on Mar. 20, 2023
 - Expansion of federal jurisdiction
 - Agencies focused on implementing Step One
- **Step Two Unlikely**
 - “Refinements”/guidance post-Sackett?

Legal Challenges to the 2023 Rule

- **S.D. Texas**
 - Texas and Idaho Attorneys General
 - NMA’s industry coalition
- **District of North Dakota**
 - Coalition of 24 states (led by West Virginia Attorney General Morrissey)
 - NMA’s industry coalition
- **E.D. Kentucky**
 - Kentucky Chamber of Commerce coalition

Still Waiting for Supreme Court Decision in *Sackett v. EPA*

- Oct. 3, 2022: Supreme Court heard oral argument
- Opinion expected soon
- Scope of opinion could influence next steps, if any, from agencies

NMA Next Steps

- Prepare for regulatory uncertainty post-Sackett
- Engage in litigation challenging 2023 Rule
- Engage in agencies’ next steps/implementation
- Coordinate with state and Congressional allies
- Congressional oversight

Congressional Attention on WOTUS



Committee on Transportation and Infrastructure Chairman Sam Graves (R-MO) and Water Resources and Environment Subcommittee Chairman David Rouzer (R-NC) led 147 Members of Congress today in introducing a joint resolution of disapproval under the Congressional Review Act (CRA) on the Biden Administration's flawed and burdensome "Waters of the United States" (WOTUS) rule. This rule will lead to sweeping changes to the federal government's authority to regulate what is considered a navigable water, with enormous impacts on small businesses, manufacturers, farmers, home and infrastructure builders, local communities, water districts, and private property owners.

"As American families and businesses continue suffering under the economic crises caused by the disastrous Biden policies of the last two years, this Administration has inexplicably decided to move the country back to the costly and burdensome WOTUS regulations of the past," said **Graves**. "In an unnecessary and wasteful use of resources, the Administration clumsily put forward its rule before the Supreme Court in the **Sackett** case, which will affect and alter what the Administration has put forward. It is the responsibility of the President and his administration to review onerous rules like this one handed down from the Executive branch. My colleagues on both sides of the aisle will join in this effort to preserve regulatory power from becoming an unnecessary, and broadly defined federal power."

"The Biden Administration's WOTUS rule is both poor policy and badly timed,"
overly burdensome regulations on farm families, small businesses, infrastructure
- further harming our already struggling economy. Rushing to issue a new
forthcoming decision is not wise. It will only create additional confusion and uncertainty
to be rescinded so that Americans across the country are protected from subjective
of the Congressional Review Act is the best and most appropriate way for the House
heard and push back. I'm proud to lead my colleagues in Congress as we work to terminate
one."

[Click here to view the legislation.](#) [Click here to view the list of all 147 cosponsors.](#)

The House Joint Resolution introduced today, if enacted, would terminate the Biden WOTUS rulemaking. CRA, which provides a mechanism for Congress to



SHELLEY MOORE
CAPITO

FEBRUARY 02, 2023

EPW Ranking Member's resolution of disapproval "will give every member of Congress the chance to stand with farmers, ranchers, landowners, and builders, and protect future transportation, infrastructure, and energy projects of all kinds in their states."

WASHINGTON, D.C. – U.S. Senator Shelley Moore Capito (R-W.Va.), Ranking Member of the Senate Environment and Public Works (EPW) Committee, today led all 48 of her Senate Republican colleagues in introducing a formal challenge to the Biden administration's Waters of the United States (WOTUS) rule through a Congressional Review Act (CRA) joint resolution of disapproval.

The resolution comes after the Environmental Protection Agency (EPA) and Army Corps of Engineers announced a new rule in December 2022 regarding Navigable Waters Protection Rule (NWPR), and changing the definition of navigable waters in the United States in a way that will expand federal regulatory authority.

Ranking Member Capito said. "This Congressional R... disapproval will give every member of Congress the... ranchers, landowners, and builders, and protect futu... e, and energy projects of all kinds in their states. I appr... support we've received in both the Senate and House, and... we fight to place an important check on this misguided over... administration."

Graves (R-Mo.-06), chairman of the House Committee on Transportation and Infrastructure (T&I), simultaneously led his colleagues in introducing an identical resolution in the House.



The **Waters Advocacy Coalition (WAC)** includes nearly **50 organizations** representing agriculture, energy, infrastructure, construction and real estate, manufacturing, mining, recreation, specialty pesticides, state departments of agriculture, and many other **job creators that represent virtually every corner of the American economy.**

WAC members need a clear, commonsense WOTUS definition to create jobs and support their communities while protecting clean water resources. The new WOTUS rule makes these efforts more difficult, puts much needed food, housing, and energy more expensive for American families.

Clean Water Act and WOTUS

Environmental Protection Agency (EPA) and the Army Corps of
"waters", defined in the statute as "the waters of the United
EPA and Corps as WOTUS are under exclusive state and local

defined by the EPA and Corps through regulation, the
law, and litigation for decades. Multiple Supreme Court decisions
 over the Supreme Court nor the Agencies have provided
 congressional intent, and how to determine jurisdiction persist
Lockett v. EPA, a case that could have significant ramifications
 significant urging by Congress and the regulated community to
 Agencies disregarded this commonsense request and

Global Economy and Jobs

businesses and farmers, to manufacturers and homebuilders – WOTUS rule so they can protect the environment, operate with legal certainty, and avoid the costs of annual repeals, remands, and reintroductions of WOTUS. The new WOTUS rule will make economic sense and create jobs by giving businesses the certainty to invest in U.S. operations and businesses.

Truth vs. Fact

...n't affect the new WOTUS rule.
...ckett v. EPA. In this case, the Court
...test that forms the foundation of the
...n over wetlands. Despite pleas
...ed the case, the agencies
...tt could render substantial
...r WOTUS rule and more

#CleanWaterClearRules

WATER QUALITY SUBCOMMITTEE

Powerplant Effluent Limitation Guidelines (ELGs)

Background

- 2020 Rule provided coal plants needed flexibilities for treatment of flue gas desulfurization wastewater and bottom ash transport water
- Revised the requirements for two waste streams
- Established new compliance deadlines

Biden Reconsideration

- Proposed rule expected soon
- OMB completed interagency review on Mar. 2, 2023
- Likely to result in more stringent ELGs and could modify or remove any or all existing subcategories

NMA's Strategy

- Coordinating with new industry allies
- Will advocate retention of flexibilities and importance of coal generation to grid reliability
- Comment on the proposed rule



WATER QUALITY SUBCOMMITTEE

Tribes and Water Quality Standards (WQS)

WQS Regulatory Revisions to Protect Tribal Reserved Rights

- EPA has proposed to change its WQS regulations to require states to protect tribal reserved rights
- Lack of clear scope and definitions
- Federalism questions and implementation concerns
- NMA formed industry coalition to request comment deadline extension and file comments
- Comments filed Mar. 6, 2023

Baseline WQS for Indian Reservations

- Picks up from where the Obama administration left off in 2016
- EPA plans to propose a rule to set baseline WQS for Indian reservation waters that do not currently have them
- Currently at OMB for interagency review
- Proposed rule expected soon

NMA Strategy

- Will continue engagement with EPA and industry coalition partners
- Will file comments as appropriate
- Evaluate congressional oversight



AIR QUALITY SUBCOMMITTEE

AIR QUALITY SUBCOMMITTEE

Ozone Transport Rule

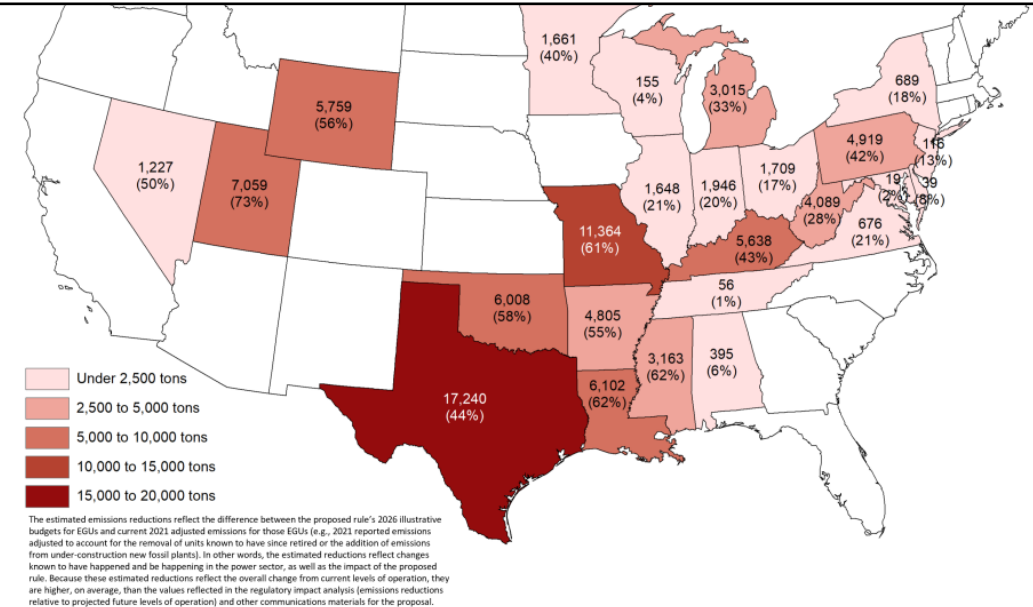
What are the potential impacts?

- Industry projects over **48 GW of capacity at risk**
- Compliance costs estimated at **\$1.1 billion** by EPA
- **Doubles** number of covered states to **25** for utilities
- Designed for strict emissions reductions (e.g., Utah 73%; Mo. 61%; Wyo. 56%; Nev. 50%; Ky. 43%)

Latest Developments

- **State Implementation Plans (SIPs):**
 - **Feb. 13:** EPA publishes final action denying 19 SIPs, partially approving 2 SIPs, and deferring 2 SIPs.
 - **Mar. 15:** Effective date
 - Litigation filed in the 10th Circuit (Utah), 8th Circuit (Arkansas), and 5th Circuit (Texas)
- **Ozone Transport Rule (Federal Implementation Plan):**
 - **Feb. 9:** EPA Sends draft final rule to OMB
 - **Mar. 13:** NMA meeting with OMB
 - **Mar. 15** potential release of final rule
 - Litigation guaranteed

Power Plant Emissions Reductions in 2026 Relative to 2021



Source: <https://www.epa.gov/csapr/good-neighbor-plan-2015-ozone-naaqs>

NMA Strategy

- Filed robust comments on Jun. 21
- Coordinating with coal utility allies
- Securing governor, attorneys general, state agency leadership engagement
- Preparing to challenge the final rule
- Congressional oversight

AIR QUALITY SUBCOMMITTEE

Fugitive Emissions

Why is this important?

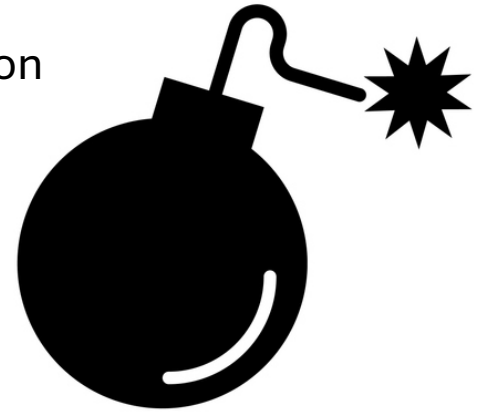
- Reverses 40+ years of law by withdrawing a necessary, well-supported, and relied upon exemption
- Requires all existing major stationary sources to include fugitive emissions in determining Clean Air Act PSD applicability for modifications
- Creates additional permitting barriers with no meaningful environmental benefit

Why is EPA's rule unlawful?

- EPA failed to properly characterize the decades-long history and current state of the law
- EPA failed to appropriately account for the significant permitting challenges the mining industry will face
- EPA's approach is arbitrary and capricious and violates principles of reasoned decision making

NMA Strategy

- Obtained a 60-day comment extension
- Filed extensive comments with hypothetical permitting scenarios
- Created a coalition of industry allies and coordinated with other trade associations
- Considering litigation (final rule targeted for Nov. 2023)



AIR QUALITY SUBCOMMITTEE

Particulate Matter NAAQS

Proposed Rule Published Jan. 27

- Revises annual PM_{2.5} Primary NAAQS between **9 – 10 µg/m³** (compared to 12 µg/m³); requested comment down to **8 µg/m³** and as high as **11 µg/m³**
- Retains Daily PM_{2.5} Primary NAAQS at 35 µg/m³, requests comment on **lowering to 25 µg/m³**
- Retains Primary PM₁₀ NAAQS at **150 µg/m³**

NMA Strategy

- Participated in OMB Meeting on Sept. 28
- Supported comment extension request letter
- Supporting coalition on comments due Mar. 28
- Engaging Congressional allies on oversight

Question for Tomorrow: Does NMA Submit Comments on PM₁₀?

Table ES-4 Summary of PM_{2.5} Emissions Reductions Still Needed by Area for the Alternative Primary Standard Levels of 10/35 µg/m³, 10/30 µg/m³, 9/35 µg/m³, and 8/35 µg/m³ in 2032 (tons/year)

Region	10/35	10/30	9/35	8/35
Northeast	0	0	238	6,741
Southeast	0	0	994	4,780
West	595	5,651	2,132	5,023
CA	8,336	9,749	14,793	23,368
Total	8,931	15,400	18,157	39,912

AIR SUBCOMMITTEE

Mercury Air Toxics Standards (MATS)

Supplemental Cost Finding

- EPA announced reaffirming the “appropriate and necessary finding” on **Feb. 17; published today**
- Totality-of-the-Circumstances Approach
- NMA submitted comments opposing

Residual Risk & Technology Review

- Undergoing OMB interagency review since **Feb. 6**
- **EPA targeting March for proposed rule**
- Reduction in particulate matter standard?
- Reduction in mercury standard (e.g., lignite coal)?
- Reduction in HCl limits?

NMA Strategy

- Rebuilding industry allies with rural cooperatives and independent power producers
- Comments dependent on legal and technical support





SOLID WASTE SUBCOMMITTEE

SOLID WASTE SUBCOMMITTEE

Continuing Pressure on Coal Ash Impoundment Closure

54 plants in 19 states depending on **Part A Extension Requests** (54.5 GW of capacity):

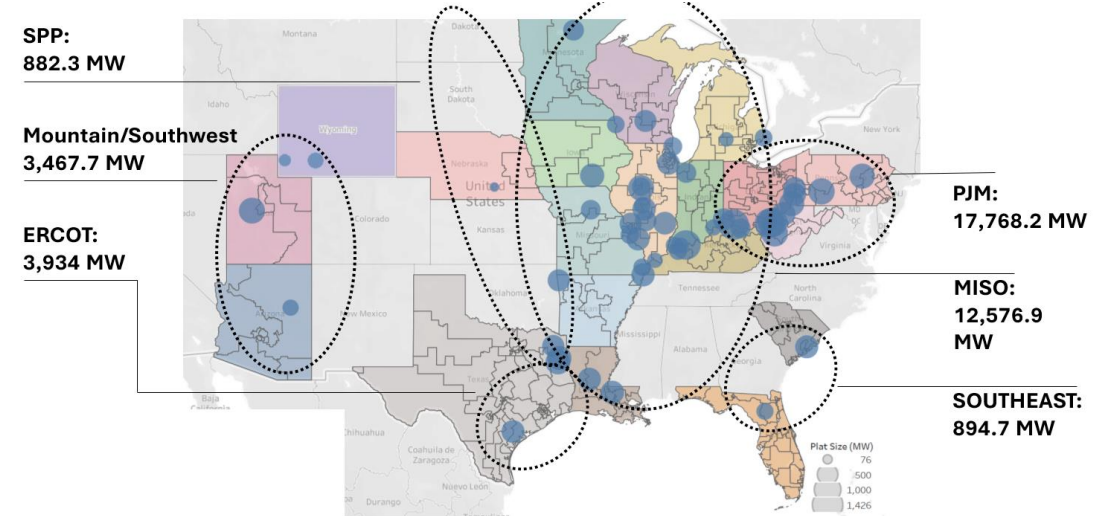
- 31 plants due to technical infeasibility and capacity
- 23 plants for shutting down coal units

2022: EPA announces preliminary decisions on **12 Part A Extension Requests** (Illinois, Indiana, Iowa, Kentucky, New York, Michigan, Missouri, Texas, West Virginia) and **finalizes 1 denial** (Ohio)

2023: EPA announces preliminary decisions **denying 6 Part B Alternate Liner Demonstration Applications** (Arizona, Michigan, North Dakota, Pennsylvania, Texas); **Comment deadline extended to April 10**

NMA Strategy:

- Executing written comments on proposals emphasizing grid reliability and assessment failures
- Recruiting oversight voices from governors, attorneys general, state agency leadership
- Securing congressional oversight
- Coordinating with allies



SOLID WASTE SUBCOMMITTEE

Asbestos TSCA Reporting

Background

- Proposed rule published May 6, 2022
- Comment period closed July 5, 2022
- **Final rule targeted for May 2023**

Scope

- One-time reporting obligation
- Four-year look-back (starting 2019-2022)
- Three-month submission period

Reportable Information: Known to or Reasonably Ascertainable Standard

- **Asbestos Domestic Manufacturers (Asbestos Mine & Mill)**
 - Report quantity manufactured by asbestos type, use, and employee exposure information
 - Applies to asbestos being mined or milled as an intentional or non-intentional impurity
- **Asbestos Importers**
 - Report quantity imported by asbestos type, use, and employee exposure information
 - Applies to mixtures, articles, and impurities (in articles, bulk materials, or mixtures)

NMA Strategy

- Filed association comments requesting an exemption for naturally occurring substances to remove unnecessary reporting obligations or, alternatively, a 1 percent applicability threshold with 9 months before reporting begins



SOLID WASTE SUBCOMMITTEE

PFAS Regulations

CERCLA Designation

- Impacts PFOA & PFOS
- Strict, joint and several CERCLA liability
- Final rule targeted for Aug. 2023

TRI Reporting

- 180 TRI reportable chemicals for RY 2022
- Removes the *de minimis* exemption; designating PFAS as a chemical of special concern
- Final rule targeted for Nov. 2023

TSCA Reporting

- Impacts imported articles; costly reporting burden
- Small business advocacy review panel conducted
- Final rule targeted for this month; potentially delayed

NMA Strategy: Working with Coalition Partners

A gloved hand holding a circular metal disc with the number 2068. The background is a solid olive green color. The text "URANIUM SUBCOMMITTEE" is overlaid in white, bold, sans-serif font, with a thin teal horizontal line underneath it.

URANIUM SUBCOMMITTEE

URANIUM SUBCOMMITTEE

NRC Uranium Groundwater Standards

NRC Rulemaking

- Will help stave off unfavorable EPA rulemaking efforts
- Will provide regulatory certainty over groundwater standards by codifying existing policies, commission decisions and license conditions

Status

- NRC & EPA continue to resist pressure from NRDC to terminate memorandum of understanding and cede rulemaking authority to EPA
 - NRDC asked for new EPA meeting in May 2022
 - NRDC reiterated request for EPA to reinstate rulemaking in Aug. 2022 IWG comments
- Fall Regulatory Agenda projects
May 2023 proposal

NMA Strategy

- Work with allied states on significant flaws in the prepublication version
- Meet with Commission in Mar. 2023 on potential improvements

URANIUM SUBCOMMITTEE

Legislation to Secure Nuclear Fuel Supply Chain

- S. 452, the Nuclear Fuel Security Act introduced by Senators Manchin (D-W. Va.), Barrasso (R-Wyo.) and Risch (R-Idaho) on Feb. 15, 2023
 - Establish a Nuclear Fuel Supply Program
 - Expand the American Assured Fuel Supply Program
 - Submit a report on a civil nuclear credit program
 - Increase purchases of domestic uranium for the DOE uranium reserve program
 - Increase the quantity of HALEU produced by U.S. companies
- Representative Bill Latta (R-Ohio) is expected to introduce a companion bill in the House



COAL SUBCOMMITTEE



COAL SUBCOMMITTEE

Federal Coal Leasing Moratorium

District Court of Montana Reinstates Jewell Secretarial Order Establishing a Federal Coal Leasing Moratorium

- Unprecedented nationwide injunction until Bureau of Land Management completes “sufficient” National Environmental Policy Act analysis
- NMA has been involved in case from the beginning
 - DOJ and NMA both filed motions to dismiss the case as moot
- NMA appealed this egregious decision to the 9th Circuit
 - Briefing began mid-Feb. 2023



COAL SUBCOMMITTEE

OSM Oversight

Background

- Previous administration finalized Ten Day Notice regulations
- Regulations are under legal challenge, with settlement negotiations ongoing

Status

- Court ordered status conference for Mar. 14, 2022
- Scheduled to publish proposed rule Feb. 2023 (delayed)
- Court proceedings are stayed while OSM reconsiders the 2020 rule

NMA Strategy

- Engage with administration in rulemaking process
- Work with Interstate Mining Compact Commission
- Engage with relevant states



COAL SUBCOMMITTEE

Bonding

- NMA request for information on bond release for discussion tomorrow
- Engagement with Interstate Mining Compact Commission
- Variations in State Escalation Factors
 - Utah increased from 1.78% in 2018 to 8.12% in 2023
 - Nevada increased nearly 15% from 2021



NEXT MEETING

Hotel Valley Ho | Scottsdale, AZ
March 4-5, 2024

