

The State Energy &  
Environmental Impact Center  
NYU School of Law

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# Where Are We Now?

A Year of Agency &  
Attorney General Action



December 2022

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State Energy and Environmental Impact Center  
NYU School of Law  
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# From the Executive Director of the State Energy & Environmental Impact Center

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This is the critical halfway point in the Biden administration's term. Several important rules have been finalized, and there is much to come. The rules will need to be defended in court.

Time is of the essence. There are many [tools available to an incoming administration](#) to roll back rules finalized in the later years of a term. And if there is another interparty transition, those tools will threaten much of what is finalized in the last two years of the term.

Throughout, state attorneys general (AGs) interested in pushing for protective environmental and energy policy have a significant role. Last year, AGs saw their advocacy bear fruit as many [agencies made important policy changes](#). During the Trump administration before that, they had an [83% win rate in court](#) in environmental and energy cases. Now, halfway through the Biden administration, [coalitions of attorneys general are working to push federal agencies](#) to issue robust rules with strong records and rules that are protective of the AGs' constituents.

AGs have been working tirelessly to address the harms of vehicle emissions, methane emissions, air pollution that crosses state borders, outdated efficiency standards, and many other significant issues. AGs also help ensure that environmental justice and equity are front and center in environmental and energy proceedings. In this way, these state-level lawyers are playing an important role on the national scene. They also have duties at home, for example, in seeking cleanup of PFAS contamination and building public engagement for the residents of their states.

At the Center, we will be tracking all of these important issues, along with developments in [plastics](#) litigation, [transmission](#) reform, and [environmental justice](#) work at the state level. We are also tracking the [administration's success rate in court in energy and environmental cases so far](#). We are so grateful for our partners and collaborators in this work, for the students that have fueled our work, and for the committed staff that have worked to help support the work of attorneys general in defending, enforcing, and promoting strong laws and policies in the areas of climate, environmental justice, environmental protection, and clean energy. To everybody working on these issues, please have a restful holiday season.

Bethany A. Davis Noll (she/her)  
*Executive Director*  
State Energy & Environmental Impact Center

# Executive Summary

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The past year has seen a lot of movement in the climate, energy, and environmental justice space. Many different coalitions of state attorneys general (AGs) have been hard at work pushing for those changes. This Report discusses some of their policy wins over the past year.

- **Vehicle Emissions.** AGs' hard work to reduce emissions from the transportation sector has paid off for the environment and public health—with stronger Clean Car Standards, stricter corporate average fuel economy standards, and the Environmental Protection Agency's (EPA) decision to authorize California to adopt car emissions standards that are stricter than the federal standards through what is known as a "waiver."
- **ESG in Retirement Plans.** AGs successfully pushed the Department of Labor to permit retirement plan advisors to consider climate and other environmental, social, and governance (ESG) factors in investment decisions.
- **Energy Efficiency.** AGs secured a key settlement requiring the Department of Energy to issue more stringent standards for a variety of common consumer products.
- **Interstate Air Pollution Reductions.** EPA issued a proposal to clean up air pollution that crosses state borders in line with safeguards for which AGs had advocated.
- **PFAS.** From letters to Congress to state enforcement suits, AGs have taken many actions to address the discharge of PFAS (forever chemicals). Accomplishments in 2022 include pushing EPA to protect public health and the environment.

These are just some highlights from the past year.

The State Energy & Environmental Impact Center is tracking and helping to publicize new agency activity of potential interest using a Twitter hashtag, #StateImpactAlert. The data from this hashtag also provides a rough indicator of the kind of progress the administration is making towards its climate, equity, environmental, and financial goals. This Report highlights four areas where there is likely to be more action from agencies in 2023:

- **Chemical Accident Safety Rule.** EPA has proposed to strengthen protections for communities and first responders around facilities handling hazardous and explosive chemicals.
- **Methane Emissions.** EPA and the Bureau of Land Management have proposals out to curb methane emissions from oil and gas operations.
- **Vehicle Emissions.** EPA is considering California's request to implement standards for medium- and heavy-duty vehicles.
- **Financial and Tax Agencies.** The Securities and Exchange Commission is grappling with rules around climate risk disclosure. The Internal Revenue Service is working to implement the Inflation Reduction Act's plethora of tax credits and incentives.

Follow the hashtag, #StateImpactAlert, to stay up-to-date on these and other rules.

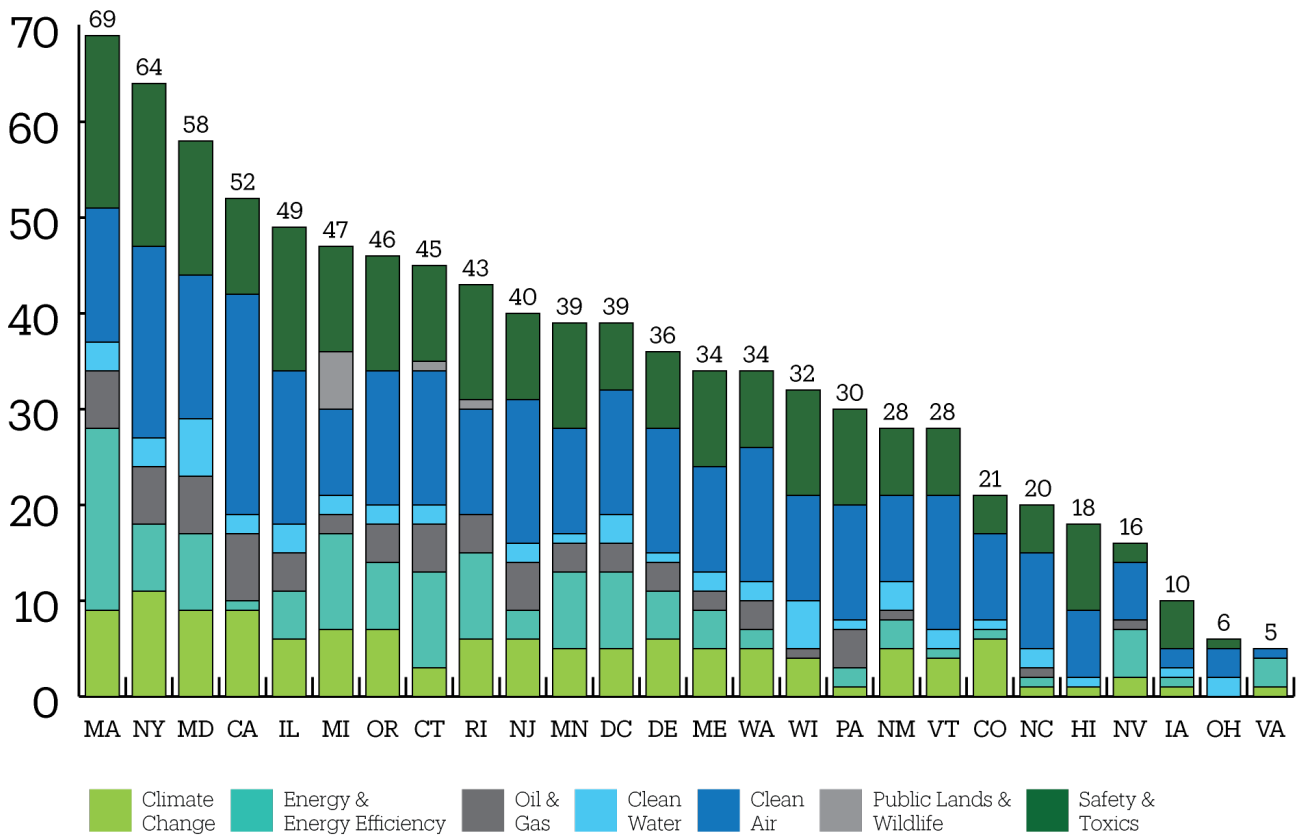
While it is clear there is a lot going on, there are a number of obstacles to public participation as those rules develop. AGs have a role to play in working to make sure that people with lived experiences can participate in the rulemakings that will affect their lives. They can advocate for funding and engage and educate the public on the issues. This is an important piece of promoting an equitable transition to clean energy and addressing harms from pollution.

This Report begins by discussing several significant policy achievements this past year. The next Section looks at what is to come. The last Section of this Report looks at the requirements and reasons for public comment, as well as challenges in building robust public participation and highlights a role for AGs.



The Center’s [AG Actions Database](#) tracks actions of regional and national significance taken by attorneys general to advance clean energy, climate, and environmental laws and policies. The following graph depicts state actions by issue area for states with five or more total actions.

**Figure 1. AG Actions by State — 2022**



**Source:** The data in this chart were drawn from entries in the Center’s database from January 1, 2022 through December 2, 2022.<sup>1</sup> Please note, the database filters actions into more specific categories than the ones represented, and many state actions span multiple categories. For purposes of this chart, the actions are listed only once and are categorized into the issue that they align with most closely. While the Center strives to be thorough in recording state actions in the database, we cannot guarantee that every action is represented here.

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# Attorney General Policy Wins & Highlights Over the Past Year

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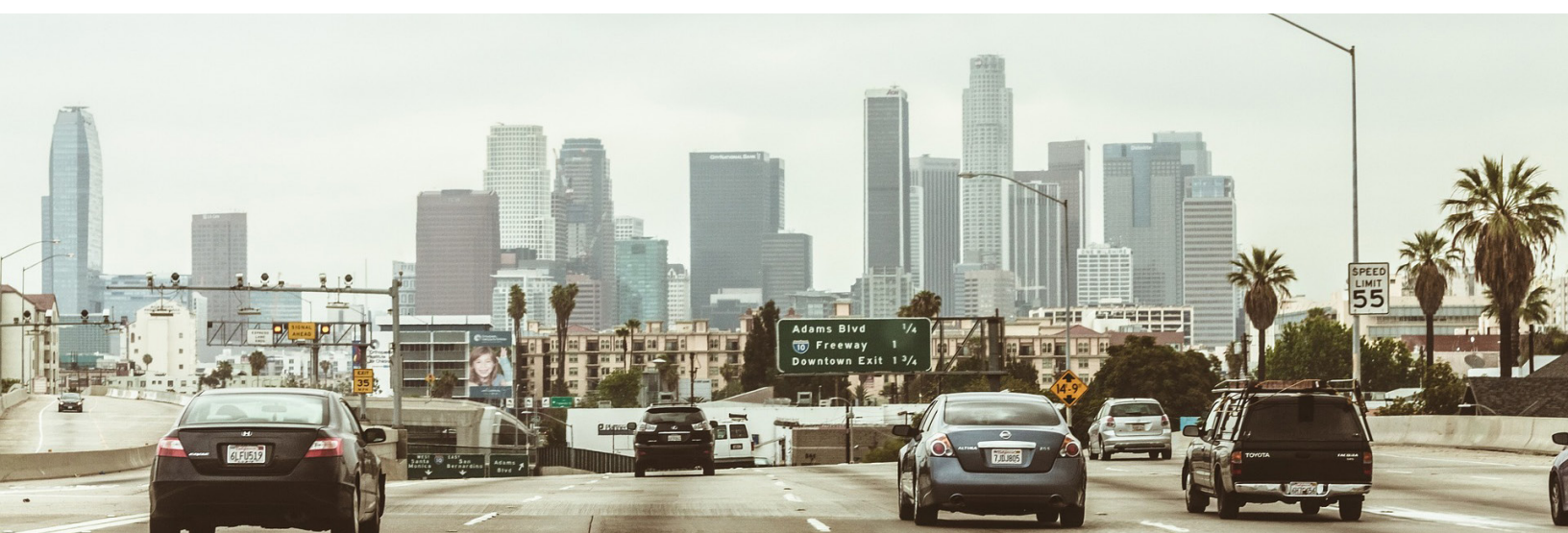
Attorneys general (AGs) had several notable policy wins that will deliver substantial reductions in greenhouse gas emissions (from energy efficiency improvements to vehicle emissions reductions) as well as more public health protections from harmful pollutants (such as PFAS and air pollution). In addition to protecting health and the environment, AGs have worked to protect the public's pocketbooks by ensuring that investors responsible for stewarding retirement savings plans can consider relevant environmental, social, and governance factors—like climate impacts—to make sound investment decisions for their beneficiaries. And AGs have kept up their momentum on environmental and energy advocacy, intervening to defend several of these new rules in court. This Section provides some highlights of AG environmental and energy wins and actions in 2022.

## Vehicle Emissions

In 2022, AGs took action to reduce greenhouse gas (GHG) emissions from the transportation sector,<sup>2</sup> including defending hard-fought wins in the courtroom and advocating for stronger federal policy.

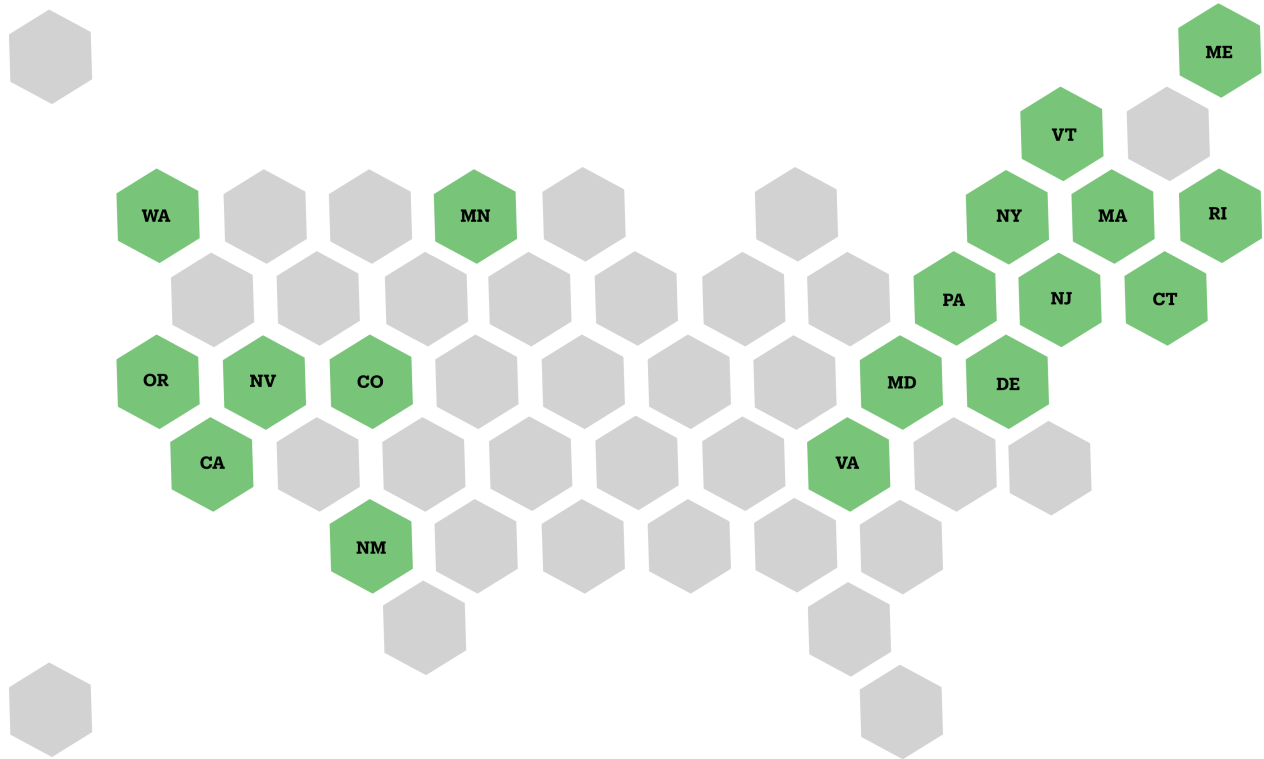
California AG Rob Bonta led a coalition of 22 AGs in urging the Environmental Protection Agency (EPA) to strengthen the greenhouse gas emission standards for passenger cars and light trucks, after the agency proposed standards that the states viewed as too weak.<sup>3</sup> At the end of last year, EPA finalized revisions to its Clean Car Standards rule—which sets GHG emission standards for the model years 2023–2026,<sup>4</sup> including the higher standards AGs pushed for, for model years 2025–2026.<sup>5</sup>

Now, the standards are being challenged in court and the AG coalition is stepping up to defend them. The AG coalition (now up to 23 with Michigan) have joined the case<sup>6</sup> to defend the standards in a challenge brought by a Texas-led coalition. The California-led AG coalition represents states that face significant injuries without the Clean Car Standards, such as increased frequency and severity of drought, wildfires, and other extreme weather events, as well as, for coastal states, loss of sovereign territory submerged by rising seas.<sup>7</sup> The Clean Car Standards have the potential to reduce GHG emissions by approximately 3.1 billion metric tons, which the AGs explain is crucial to their “urgently needed efforts to mitigate the substantial and growing adverse effects of climate change in their States.”<sup>8</sup>





**Figure 2. States that Have Adopted California’s Low-Emission Vehicle Standards (LEV)**



**Source:** States that have Adopted California’s Vehicle Standards under Section 177 of the Federal Clean Air Act, California Air Resources Board (May 13, 2022), [https://ww2.arb.ca.gov/sites/default/files/2022-05/%C2%A7177\\_states\\_05132022\\_NADA\\_sales\\_r2\\_ac.pdf](https://ww2.arb.ca.gov/sites/default/files/2022-05/%C2%A7177_states_05132022_NADA_sales_r2_ac.pdf).

Attorneys general had another significant win when they convinced<sup>9</sup> EPA to restore California’s authority under the Clean Air Act to set vehicle standards that are stronger than EPA’s,<sup>10</sup> as well as other states’ authority to choose to adopt California’s stronger standards. California AG Bonta now leads a coalition of 21 AGs in intervening in the challenge to that decision in order to help defend the new waiver.<sup>11</sup> The AGs argue that the waiver properly respects states’ rights conferred by Congress and that vacating it would lead to substantial increases in GHG emissions within the states.<sup>12</sup> These increased emissions would cause many harms to the states, including damage to state land and infrastructure and increased public expenditures, and would impede the states from achieving emissions reductions that have been mandated by state law.<sup>13</sup>

Strong state standards are on the line in that case. California has adopted two vehicle emission standards (the Low-Emission Vehicle standards and the Zero-Emission Vehicle standards) that several other states have followed. The first, the Low-Emission Vehicle program, reduced emissions of pollutants such as particulate matter and greenhouse gas emissions for light- and medium-duty vehicles,<sup>14</sup> and has been adopted by seventeen states and the District of Columbia.<sup>15</sup> The second standard, the Advanced Clean Cars II Rule, was adopted in August 2022, and it accelerates its Zero-Emission Vehicle standards so that

they will culminate in a 100% zero emission vehicle sales mandate within the state for the year 2035 and beyond.<sup>16</sup> Three states—New York, Massachusetts, and Washington—have adopted this strengthened Zero-Emission Vehicle standards,<sup>17</sup> and others are considering whether to adopt the standards as well.<sup>18</sup>

States are busy defending against another challenge to federal policy aimed at making new motor vehicles more fuel efficient. After successfully advocating<sup>19</sup> for the National Highway Traffic Safety Administration to adopt stricter corporate average fuel economy (CAFE) standards for 2024–2026—which require automakers to ensure that their fleet, on average, meets a certain number of miles per gallon—22 AGs are also now helping to defend those standards in court.<sup>20</sup> The coalition, led by California AG Bonta, has intervened in the consolidated proceeding of several challenges to the agency’s stricter CAFE standards—which includes a challenge brought by another group of states led by Texas. The California-led coalition is defending the agency’s policy to protect their “residents and state resources from high fuel costs, oil price shocks, and negative effects of higher fuel consumption, including harmful emissions from fuel refining activities.”<sup>21</sup>

Beyond federal rules, AGs are also holding companies accountable for fuel economy misrepresentation. This year, in response to enforcement actions brought by 41 AGs, Ford Motor Company agreed to settle claims that the company violated consumer protection laws by advertising false or misleading information about the fuel economy of its vehicles.<sup>22</sup> The multi-state settlement requires Ford Motor Company to agree not to misrepresent its vehicles’ fuel economy, and to pay nineteen million dollars plus costs to the plaintiff states.<sup>23</sup>

## ESG in Retirement Investing

In November 2022, the Department of Labor finalized a rule that allows Employee Retirement Income Security Act (ERISA)-regulated fiduciaries to consider climate change—and other environmental, social, and governance (ESG) factors—while making investment decisions on retirement plans.<sup>24</sup> Overall, the final rule provides clear guidance for fiduciaries to adhere to, and advances the financial interests of investors who participate in ERISA-covered retirement plans—in line with comments from a coalition of AGs pushing for it.<sup>25</sup>

Prior to the rule’s finalization, California AG Bonta led a 12-state coalition in comments on the proposal.<sup>26</sup> The comments explained that (1) states and the federal government have adopted (and continue to adopt) ambitious policies to reduce greenhouse gas emissions, advance clean energy, and increase climate resilience and justice; (2) a substantial percentage of their states’ residents have ERISA-covered plans (which make up the bulk of retirement savings) and are an important income source after retirement; and (3) climate and ESG factors are often material to ERISA fiduciaries’ prudent investment decisions. The comments argued that the proposed rule needed to be finalized in order to provide clarity and guidance to fiduciaries so that investors’ financial and ESG interests can both be advanced where appropriate, but never in ways that would prioritize ESG concerns over financial well-being.

A separate coalition of attorneys general had commented to express concerns that the rule would allow fiduciaries to “invest employee retirement savings in a way that benefits social causes and corporate goals even if it adversely affects the return to the employee.”<sup>27</sup>

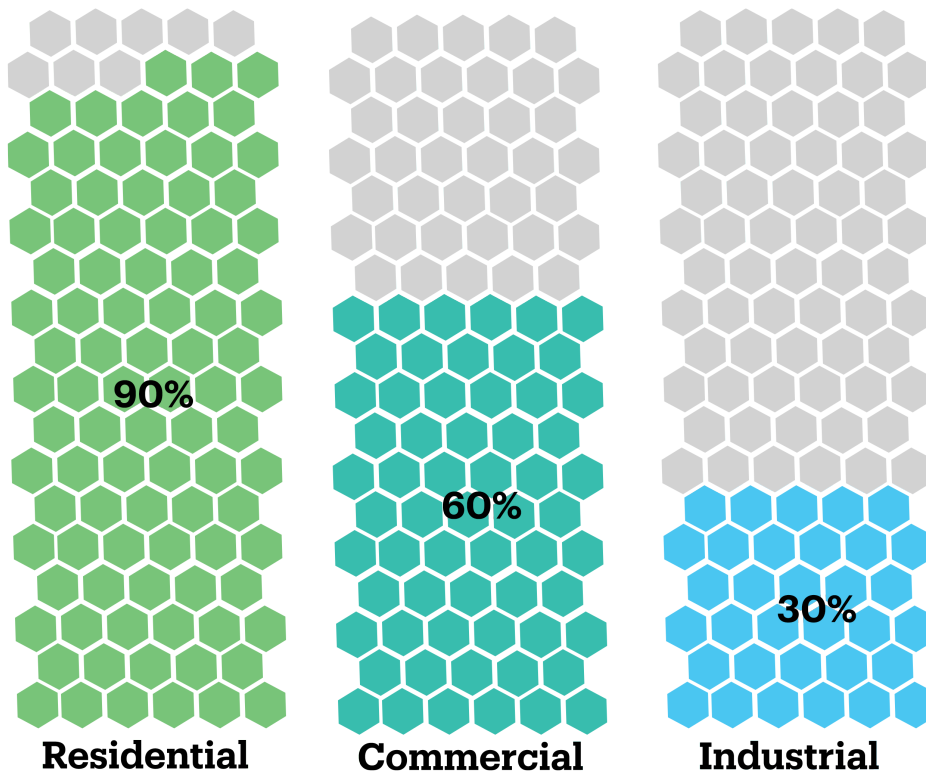
## Energy Efficiency

Attorneys general have made energy efficiency gains both nationally and locally. They secured a settlement with the federal government that will save consumers billions, they defended a municipal ban on gas hookups in new buildings, and they supported a local development project that will save money and energy.

### *National Standards*

Energy efficiency is a proven way to reduce pollution, cut down on greenhouse gas emissions, save consumers money, and improve grid reliability. The U.S. Department of Energy sets standards for consumer and commercial products under the Energy Policy and Conservation Act, which ensure that these products become more energy efficient over time.

**Figure 3. Percentage of Energy Usage in Each Sector Covered by the Energy Policy and Conservation Act**



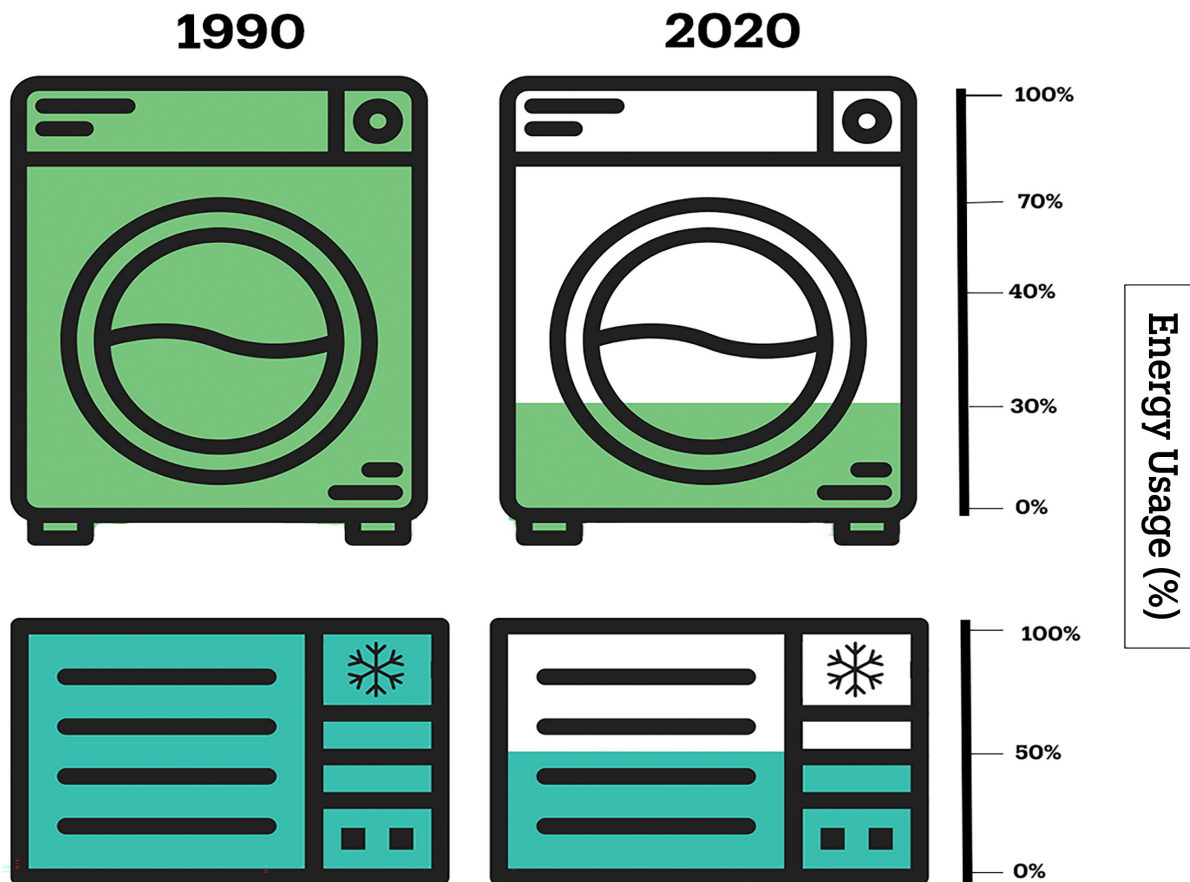
Source: Complaint, New York, et al., v. Dan Brouillette, No 20-cv-9362 (S.D.N.Y. Nov. 9, 2020), available at <https://stateimpact-center.org/ag-work/ag-actions/fifteen-ags-sued-energy-department-over-failure-review-and-update>.

In September 2022, New York AG Letitia James led a coalition of 18 states and the City of New York in securing an agreement from the Department of Energy to update standards for a variety of consumer and commercial appliances, including many products found in the home such as clothes dryers, water



heaters, and furnaces.<sup>28</sup> That settlement requires the agency to update standards for 25 product categories over the next two years.<sup>29</sup> Once these standards are updated, estimates show that they will help save residential customers over \$600 billion in utility bills by 2050 and avoid over 900 million metric tons of carbon emissions annually by 2040.<sup>30</sup>

**Figure 4. Effect of the Energy Policy and Conservation Act on the Efficiency of Washing Machines and AC Units**



**Source:** Complaint, New York, et al., v. Dan Brouillette, No 20-cv-9362 (S.D.N.Y. Nov. 9, 2020), available at <https://stateimpact-center.org/ag-work/ag-actions/fifteen-ags-sued-energy-department-over-failure-review-and-update>.

Attorneys general have been involved in supporting strong efficiency standards for other products as well. In July 2022, the Department of Energy proposed energy efficiency standards for non-weatherized gas furnaces and mobile home gas furnaces.<sup>31</sup> In October 2022, New York AG James led a coalition of 13 states and the City of New York in comments pushing for strong standards for these furnaces.<sup>32</sup> The agency had estimated that replacing a furnace in order to meet the proposed standard would save about \$500 over the life of the appliance.<sup>33</sup> The AGs have argued that these updates are needed urgently and that federal funding under the Infrastructure Investment and Jobs Act and the Inflation Reduction Act makes more efficient heating even more attainable for many customers.

## Local & State Efficiency Initiatives

Attorneys general lent their support to a municipal gas ban in the face of a trade association challenge. In this case, the City of Berkeley had banned natural gas hookups in new buildings.<sup>34</sup> A restaurant trade association challenged the ban, arguing that it is preempted by the Energy Policy and Conservation Act. That statute directs the Department of Energy to set federal energy efficiency standards and makes those standards exclusive so as to avoid a patchwork of different efficiency standards for each appliance.<sup>35</sup> But California AG Bonta, leading a coalition of nine states and the City of New York in an *amicus* brief in support of Berkeley,<sup>36</sup> argued that gas bans are not preempted; rather the Act pertains to standards governing the amount of energy an appliance uses, not the type of energy in a building.

Attorneys general are also succeeding in pushing energy efficiency work at the state level. Recently, New York AG James worked with the New York State Energy Research and Development Authority on a model energy efficiency project in Albany’s South End neighborhood, which is “comprised of predominantly low- and moderate-income households that face disparate public health, environmental pollution, and climate change impacts.”<sup>37</sup> This project will demonstrate the benefits of increasing efficiency of large multifamily buildings through retrofitting—that is, adding features after the initial construction—as well as providing new green spaces to the neighborhood to help with air pollution and extreme heat. The work, including installing geothermal heat pump systems, thermostats, ventilation, and insulation, is estimated to provide at least 40% energy savings while making the living spaces more comfortable.

## Interstate Air Pollution

Attorneys general have been pushing EPA for years for stronger standards to limit air pollution that crosses state boundaries. In April 2022, EPA issued a proposed rule to strengthen its implementation of the “Good Neighbor” provision of the Clean Air Act, which aims to cut pollution in upwind states that flows downwind, harming residents there.<sup>38</sup> The proposal includes new safeguards that several AGs have been pushing EPA to adopt,<sup>39</sup> including mandated emission reductions from certain non-power plant sources, which would help downwind states comply with national air quality standards.

Seven AGs, led by New York AG James, submitted comments on the proposal arguing it “makes critical progress towards compliance with the requirements of the Good Neighbor Provision,” but urging EPA to further strengthen the proposed rule by accelerating the timeframes for emissions reductions.<sup>40</sup> This, the AGs argue, is necessary as “[t]ransported ozone pollution produces serious health, welfare, and practical consequences for these downwind areas and their residents.”<sup>41</sup> Indeed, EPA acknowledges in the proposal that pollution from upwind states severely affects the quality of life in downwind states.<sup>42</sup> The agency estimates that the rule, as proposed, would reduce NOx emissions in the 2026 ozone season by approximately 137,000 tons (including emissions from power plants and non-power plant sources).<sup>43</sup>

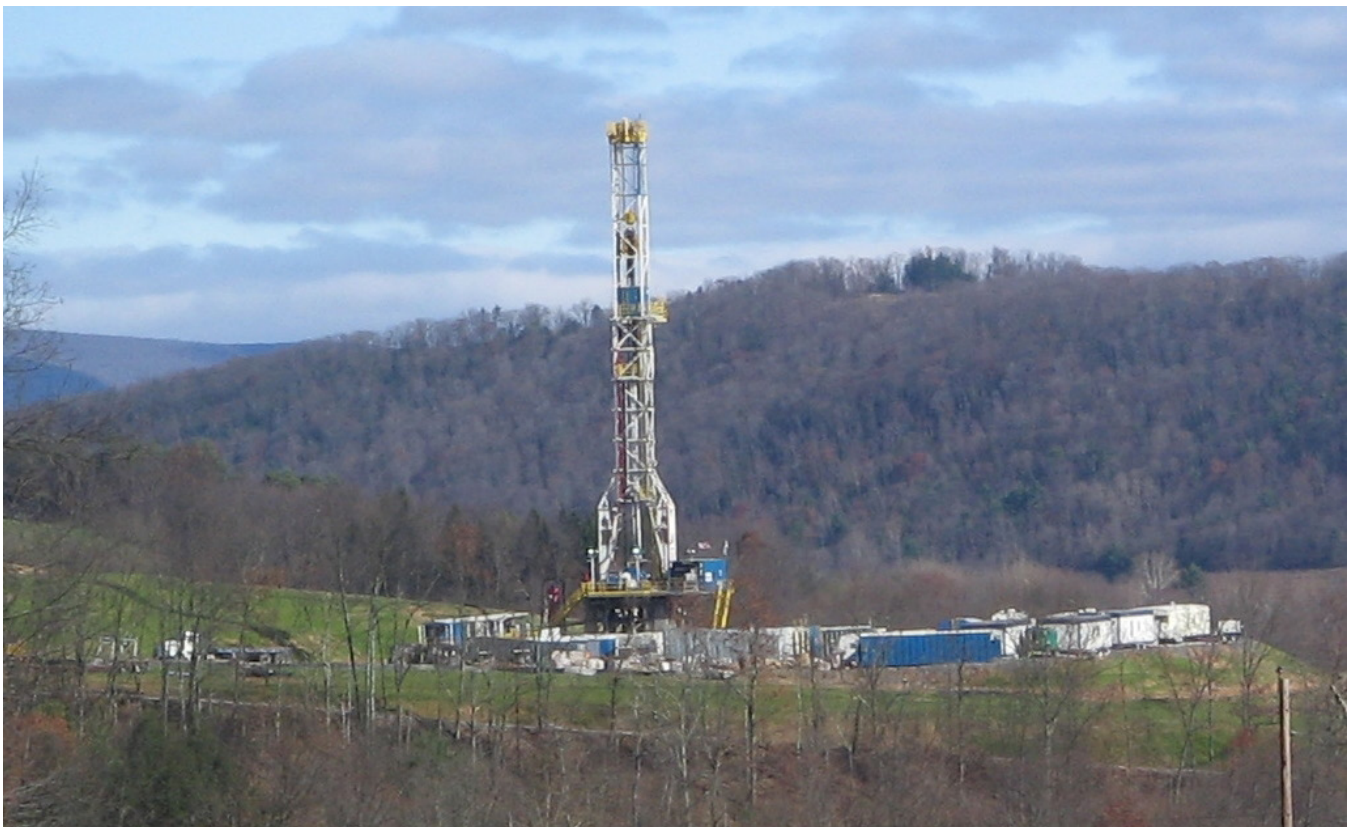
## PFAS – “Forever Chemicals”

As information on the toxicity and pervasiveness of “forever chemicals”—poly- and per-fluoroalkyl substances (PFAS)—continues to emerge,<sup>44</sup> AGs across the country are working to ensure that regulations keep pace with science. This summer, several AGs saw their advocacy efforts on PFAS come to fruition.

Twenty-two AGs, led by New York AG James and former California AG Xavier Becerra, asked Congress to direct EPA to add PFAS to its Toxic Release Inventory, which they argued would help them to identify “new potential sources and areas of contamination.”<sup>45</sup> Following the states’ letter, Congress directed EPA to add certain PFAS to the Toxic Release Inventory.<sup>46</sup> In July 2022, pursuant to that directive, EPA added

five PFAS to the inventory, making the chemicals subject to reporting requirements under the Emergency Planning and Community Right-to-Know Act and the Pollution Prevention Act.<sup>47</sup>

The AGs had also urged Congress to designate PFAS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to “promote cleanup of some of the worst contaminated sites in the country that pose substantial threats to human health and/or the environment.”<sup>48</sup> Congress has not yet acted on that request, however, in September 2022, EPA issued a proposal to use its administrative authority under the Clean Air Act to designate two forms of PFAS as CERCLA hazardous substances.<sup>49</sup> Eighteen AGs, led by New York AG James, submitted comments urging EPA to “promptly finalize” the proposal.<sup>50</sup> In these comments, the AGs further encouraged EPA to expand its funding to help state and local governments (including public providers such as water utilities and landfills) pay for PFAS investigation, cleanup, and infrastructure.



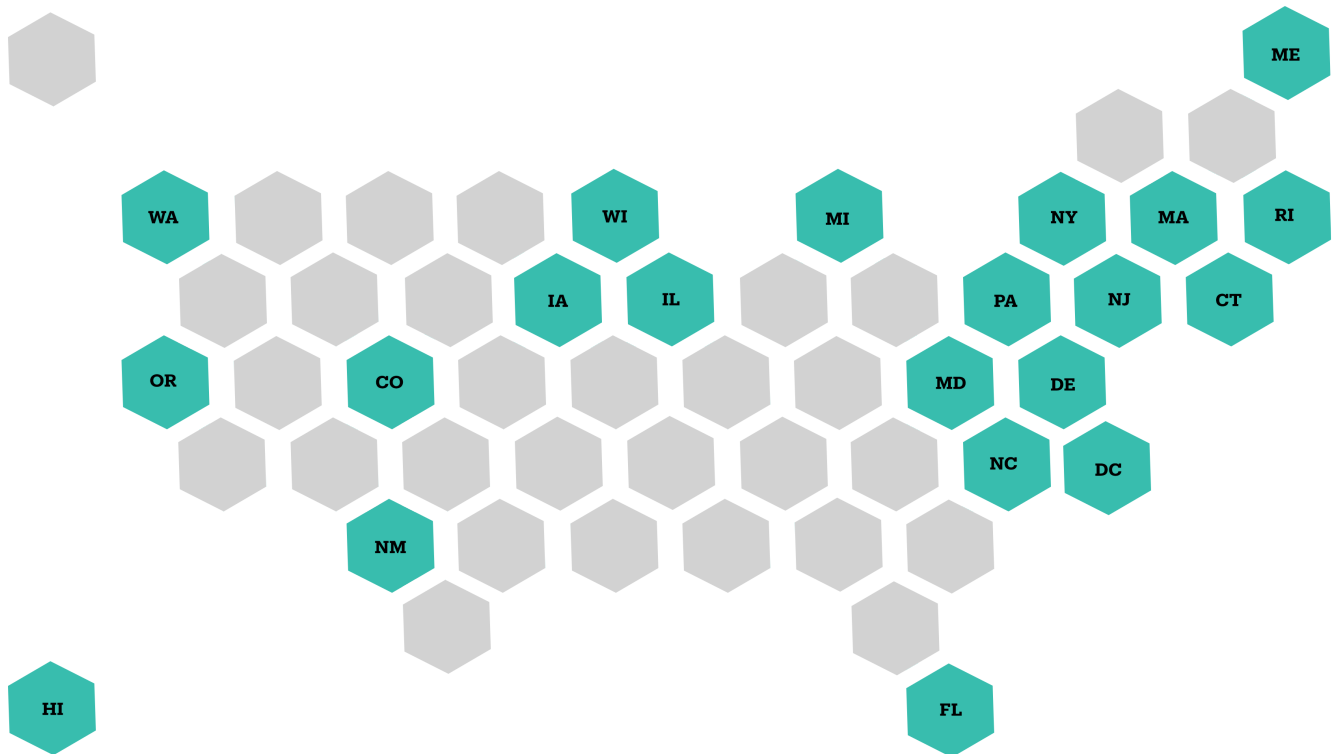
**Source:** Marcellus Shale Gas Drilling Tower, Ruhrfisch, CC BY-SA 3.0 (<https://creativecommons.org/licenses/by-sa/3.0>), via Wikimedia Commons.

Several AGs are pushing EPA to take further steps to protect the public from hydraulic fracturing and drilling operations that could otherwise contaminate drinking water supplies with PFAS. In February 2022, ten AGs led by Pennsylvania AG Josh Shapiro asked EPA to take several actions to address risk of PFAS from these activities, including using its authority under the Toxic Substances Control Act to (a) obtain more information on PFAS used in these operations, and (b) close loopholes that allow PFAS to be used in small amounts without appropriate review or safeguards, explaining that PFAS can be harmful at very low levels.<sup>51</sup> The states argue that they are “spending tens of millions of taxpayer dollars to protect [their] residents from PFAS by remediating PFAS contamination in drinking water, providing alternative drinking



water supplies, testing the blood of residents of impacted communities, and determining the scope of contamination.”<sup>52</sup> The AGs urged EPA to adopt these measures under the Toxic Substances Control Act to reduce the risk of contamination to their states’ waters.

### Figure 5. States that Brought PFAS Enforcement Actions or Advocated for Stronger Federal Protections in 2022



Source: AG Actions Database, State Energy & Environmental Impact Center, <https://stateimpactcenter.org/ag-work/ag-actions>; See New York et al., Multistate Comments in Response to Proposed Designation of PFOA/PFOS as CERCLA Hazardous Substances (Nov. 7, 2022), <https://stateimpactcenter.org/ag-work/ag-actions/eighteen-ags-submitted-comments-to-epa-urging-designation-of-pfas-as-cercla-hazardous-substances>.

There is plenty of PFAS work at the state level as well. As of 2022, AGs have brought many enforcement actions to hold polluters accountable for PFAS-related harms. For example:

- The attorneys general of Colorado, Florida, Massachusetts, and North Carolina each sued numerous manufacturers of firefighting foam<sup>53</sup> for causing or contributing to PFAS-contamination in their states, alleging several theories of liability including public nuisance, negligence, failure to warn, and more.
- Wisconsin AG Josh Kaul sued two companies alleging each violated the state’s hazardous substance spill laws by causing PFAS contamination when testing firefighting foam, and

failing to properly notify the state and remediate that contamination.<sup>54</sup>

- Illinois AG Kwame Raoul secured an interim consent order with Sugar Camp Energy to require testing of ponds at its coal mining facility for PFAS and to install treatment systems to remove PFAS from its wastewater.<sup>55</sup> AG Raoul had filed a lawsuit against Sugar Camp alleging the firefighting foams it used contained PFAS, jeopardizing public safety and the environment.

While firefighting foam is a common source of PFAS contamination, the harmful substances are found in numerous other contexts as well. AG offices around the country are working to ensure that PFAS uses comply with legal safeguards going forward and that any polluters pay their fair share of remediation, including public health efforts, needed to address the effects of prior contamination. For example, Michigan AG Dana Nessel sued a metal company alleging it contaminated nearby soil and groundwater with PFAS and other hazardous substances in violation of state laws—and demanding the company investigate, remediate, and pay damages for the contamination.<sup>56</sup>

Illinois AG Raoul sued 3M Company for mishandling PFAS, and asked the court to compel the company to clean up contamination and take several actions to prevent further harm to health or the environment around the site.<sup>57</sup> And Wisconsin AG Kaul, in a sweeping suit, challenged eighteen “major chemical companies that designed, manufactured, marketed, promoted, sold, supplied, distributed, used, and/or disposed of PFAS” arguing the companies are liable for “widespread contamination of Wisconsin’s property and natural resources.”<sup>58</sup> Wisconsin argues that these companies are liable under several common law theories including public and private nuisance, trespass, negligence, and product liability for design defect and failure to warn.<sup>59</sup> The suit seeks to compel remediation, recover extensive costs the state has incurred to protect its people and land from PFAS-contamination, and impose punitive damages.<sup>60</sup>



# Focus on Upcoming Agency Action

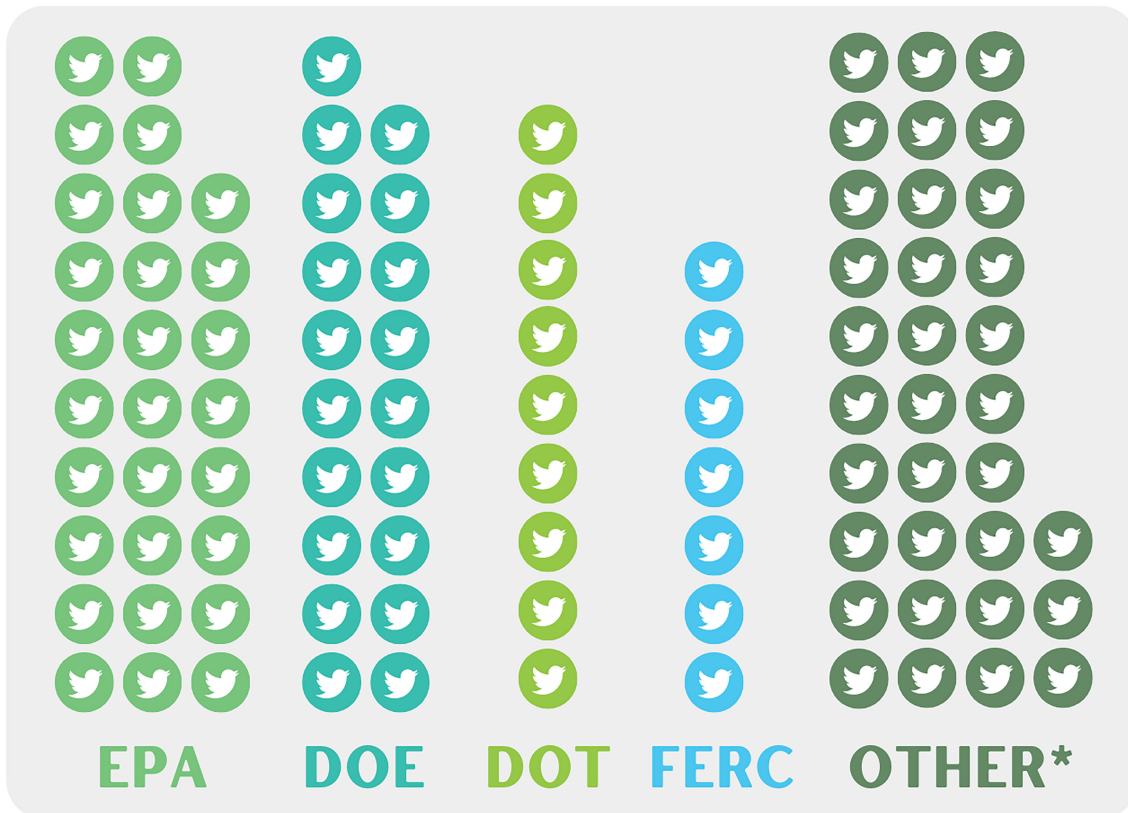
The Biden administration has issued many new proposals, final rules, and other agency actions in order to meet its climate and clean energy priorities. The Twitter hashtag, #StateImpactAlert, can be used to keep track of all those new actions. This Section discusses and presents data about these alerts. It then turns to four specific areas to watch for final rules in 2023: chemical accidents, methane emissions from oil and gas operations, vehicles, and financial agencies.

## State Impact Alerts

In January 2021, the Center launched a new tool called “State Impact Alerts” to help bring attention to the many climate, energy, environmental, and environmental justice proposals and final rules. Using the hashtag #StateImpactAlert on Twitter, the Center flags many actions at various federal agencies that touch on these subject areas.<sup>61</sup> The alerts include a brief description of the action, the agency or agencies behind it, the deadline for comments (or effective date, in the case of a final rule), the date of any public meetings, and the link to the proceeding in the *Federal Register*.

Trends in the #StateImpactAlert data illustrate that the federal government is increasing both the breadth and the depth of its actions on climate, environment, and clean energy. In 2022,<sup>62</sup> there were 100 alerts from 21 different agencies, compared to 69 alerts covering 15 agencies in 2021.<sup>63</sup>

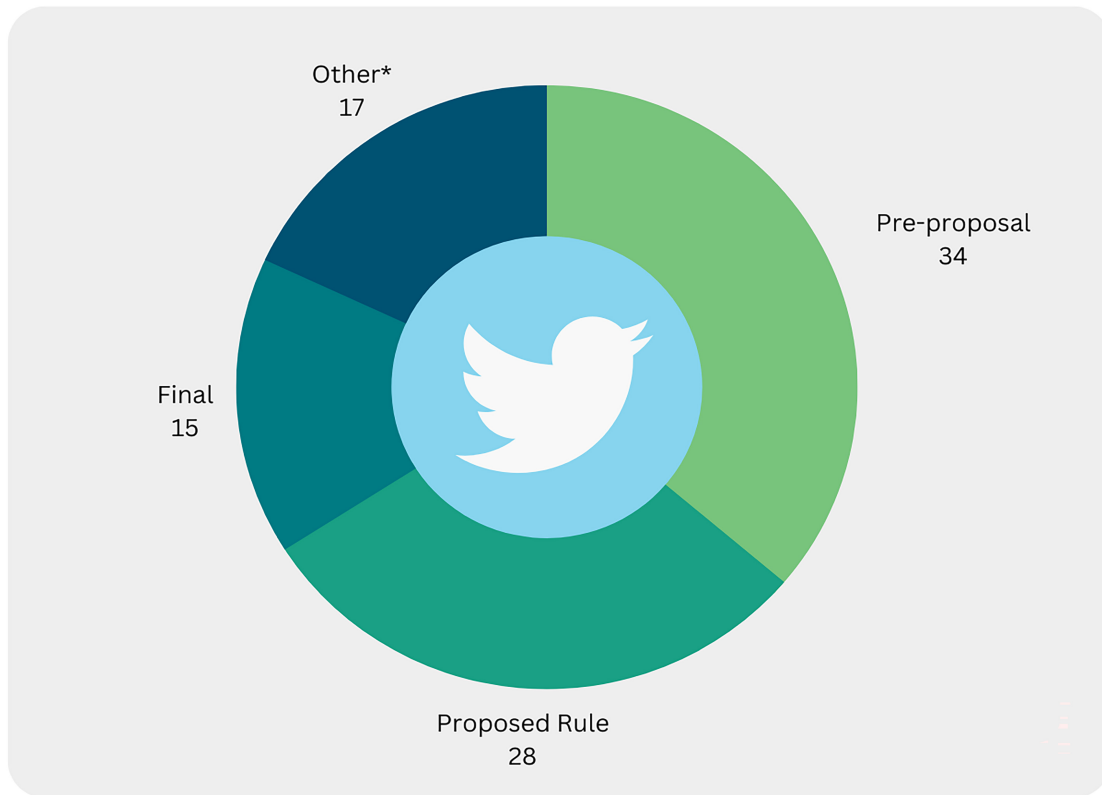
**Figure 6. 2022 #StateImpactAlert Breakdown by Agency**



\*The “Other” category refers to agencies such as USDA, NASA, SEC, HUD, DOI, HHS, GSA, DHS, DOD, NRC, and DOL.

These actions are again coming primarily out of the Environmental Protection Agency (EPA) (with 28 actions in 2022 compared to 20 in 2021) and the Department of Energy (with 19 actions compared to 16 in 2021). Seven agencies that were not covered in 2021, including the Securities and Exchange Commission, the Department of Commerce, and the Department of Housing and Urban Development, had active rulemakings or announced actions this year.<sup>64</sup>

**Figure 7. 2022 #StateImpactAlert Breakdown by Stage**



\*The “Other” category refers to actions such as requests for information, notices of proposed rulemaking, notices of availability, workshops, and notices of public meeting.

Trends in the stage of each federal rulemaking—which provide insight into how much progress agencies have made in implementing their climate and environmental plans—have remained similar to last year.

Across the agencies issuing these rules, 36 of the rules have been finalized.<sup>65</sup> The majority of these 36 final actions were related to rollbacks from the Trump era. For example, the Department of Energy’s August 2021 proposal to better categorize the types of lamps covered by energy standards,<sup>66</sup> reversed a 2020 rollback from the Trump era. The 2021 proposal was finalized in May 2022.<sup>67</sup> Other finalized rules were aimed at providing further safeguards for environmental and community health, like EPA’s rule to phase down hydrofluorocarbons,<sup>68</sup> its release of an Environmental Justice Action Plan,<sup>69</sup> and Department of Energy’s expansion of energy conservation standards,<sup>70</sup> all of which were finalized between fall 2021 and summer 2022. The majority of finalized rules tracked came from EPA and the Department of Energy, with other agencies like the Department of Agriculture, Department of Interior, Department of Transportation, Council on Environmental Quality, Department of Labor, Health and Human Services, and White House Office of Science & Technology Policy making moves on rolling back previous rules and



protecting communities through action.

All told, with #StateImpactAlerts as a rough guide, since last year, the federal government has moved closer towards implementing its goals. Follow the [#StateImpactAlert](#) to see which proposals are finalized in the coming months and into next year.

## Rules on the Horizon

Over the last two years, the Biden administration issued rules that reinstated both higher emission standards and more stringent rules that had been taken away during the Trump administration. There is still much to come. As the Biden administration enters the second half of the term, rules in the financial and environmental sectors help illustrate the work that is coming down from the many federal agencies working to implement the administration's priorities.

### *Protecting Communities from Harmful Emissions*

Under the Clean Air Act, EPA has the responsibility to establish safety rules at chemical plants handling hazardous and explosive chemicals.<sup>71</sup> After several firefighters were killed responding to a fire in a fertilizer plant in Texas, EPA recognized that it needed to update its safety standards to provide better information to first responders and to neighbors of the facilities and it finalized updates at the end of the Obama term.<sup>72</sup> During the Trump era, EPA rolled the updates back twice. One of those rollbacks was vacated after a lawsuit filed by a coalition of non-governmental organizations, AGs, and unions,<sup>73</sup> but the other rollback has remained in place since the end of the Trump administration.<sup>74</sup>

In August 2022, EPA proposed to strengthen the rule yet again in the Safer Communities by Chemical Accident Prevention rule.<sup>75</sup> New York AG James led a coalition of 20 AGs and Harris County, Texas in comments on that rule. The AGs urged the agency to consider the additional harmful impact of worsening natural and climate disasters on chemical accident risks. They also urged the agency to broaden its community outreach, to assess cumulative impacts from the covered facilities, and to assess the need to make "chemical hazard information available in multiple languages."<sup>76</sup>

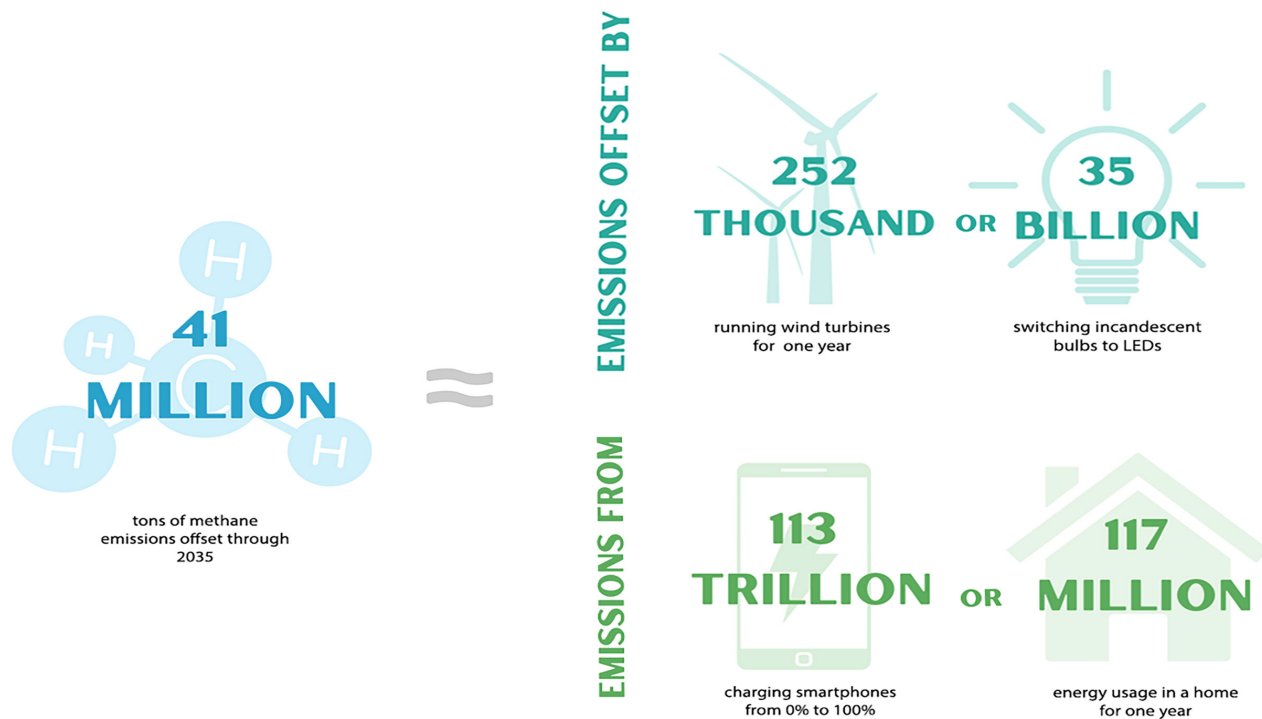
### *Curbing Methane Emissions from Oil and Gas Operations*

Methane is a powerful greenhouse gas—at least 25 times more effective at trapping heat than carbon dioxide.<sup>77</sup> Oil and gas systems are a top contributor to methane emissions in the United States, and attorneys general have been leading the push to regulate these emissions.

In November 2021, EPA released a proposed rule to strengthen its regulations of oil and gas facilities to reduce methane emissions.<sup>78</sup> The proposed rule is estimated to reduce about 41 million tons of methane emissions from the oil and gas industry. In January 2022, California AG Bonta led a multistate coalition of 21 AGs urging regular monitoring and leak repair for all well sites, banning routine flaring, collaborating with communities disproportionately burdened by the harmful emissions, and establishing guidelines for addressing the long term risks of abandoned wells.<sup>79</sup>

In November 2022, EPA announced a supplement to the proposed rule which, if finalized, would bring about more reductions.<sup>80</sup> *The comment period will be open until February 13, 2023.*<sup>81</sup> Between the supplemental proposal and the November 2021 proposal, EPA estimates that the proposed standards would reduce emissions of methane by 36 million tons from 2023 to 2035.<sup>82</sup>

**Figure 8. Projected Benefits of EPA’s Proposed Methane Rule**



**Source:** EPA’s Proposal to Reduce Climate- and Health-Harming Pollution from the Oil and Natural Gas Industry: Overview, Environmental Protection Agency (Nov. 2021), <https://www.epa.gov/system/files/documents/2021-11/2021-oil-and-gas-proposal.-overview-fact-sheet.pdf> & EPA’s Greenhouse Gas Equivalencies Calculator, (Nov. 2022), <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>.

In November 2022, the Bureau of Land Management within the Department of the Interior issued a proposed rule to reduce waste from oil and gas production activities on public lands.<sup>83</sup> These activities include venting, leaking, and flaring, which cause methane emissions. This contributes to climate change, wastes gas, and harms local communities through increased noise as well as pollutants. For years, AGs have been pushing the federal government to address these wasteful, harmful practices.<sup>84</sup>

Some states have taken the initiative to reduce their contribution to methane emissions, such as Pennsylvania and New York. Pennsylvania launched a strategy to reduce methane by decreasing emissions from natural gas well sites, compressor stations and pipelines.<sup>85</sup> *The comment period will be open until January 30, 2023.* New York directed State agencies to develop proposals and policies to identify strategies for methane capture and elimination.<sup>86</sup> Five New York State agencies and organizations worked together to identify primary areas where methane capture could be implemented along with methane mitigation strategies. This project, the Methane Reduction Plan, highlighted three major sectors responsible for the majority of emissions, which are oil and gas, landfills, and agriculture.

## ***Driving Down Vehicle Emissions***

EPA is considering a request to authorize California to enact a suite of regulations to reduce emissions from larger tailpipes—the medium- and heavy-duty vehicle sector—including by accelerating adoption of zero emission vehicles.<sup>87</sup> California AG Bonta led 17 AGs in asking EPA to grant California’s requested waiver.<sup>88</sup> If granted, several states, including Massachusetts, New Jersey, New York, Oregon, and Washington, are prepared to adopt California’s medium and heavy-duty vehicle standards.<sup>89</sup> These states and several others have also committed to promote the adoption of zero-emission heavy-duty trucks. The AGs argue that the waiver would allow their states to reduce a leading source of greenhouse gas emissions, as well as harmful co-pollutants that disproportionately affect residents of color and low income residents.<sup>90</sup>

Fifteen AGs, led by California AG Bonta, are pushing the federal government to further strengthen the National Highway Traffic Safety Administration’s corporate average fuel economy (CAFE) program. They are asking the U.S. Department of Energy to update the “petroleum equivalency factor,” used in the CAFE program. The CAFE standards apply to automakers on a fleetwide basis, meaning they must meet a target on average across their fleet. The petroleum equivalency factor is a metric which is used to determine how much credit automakers should get from building electric vehicles when calculating their fleet-wide average miles per gallon.<sup>91</sup> The AG coalition argues that the Department of Energy’s current petroleum equivalency factor is too high, allowing manufacturers to use a small amount of electric vehicles to dodge their “statutory mandate to improve the fuel efficiency of conventional vehicles.”<sup>92</sup> This, they argue, “undermines the congressional intent of the CAFE program to conserve energy and incentivize the production of electric vehicles.”<sup>93</sup>

## ***Financial Planning***

In the last few years, federal agencies have begun to grapple with the impact of a changing climate on the financial system.

In April, the Securities and Exchange Commission (SEC) published a proposal that would require public companies to disclose direct and indirect emissions.<sup>94</sup> Direct emissions are emitted by the facilities the company controls.<sup>95</sup> Indirect emissions are caused from “purchased electricity or other forms of energy” in this context.<sup>96</sup> This proposed rule provides further transparency to investors as they account for the climate impacts of the companies in which they invest. In June 2022, California AG Rob Bonta led a coalition of 20 attorneys general in comments to the SEC arguing that increased transparency on climate-related data from companies was necessary to limiting the financial risks that states and investors face.<sup>97</sup> The same month, a coalition of 24 attorneys general led by West Virginia AG Patrick Morrisey submitted a letter to the SEC opposing the ruling.<sup>98</sup> *The SEC closed the comment period on June 17, 2022. A final rule is expected next year.*<sup>99</sup>

With the Inflation Reduction Act, the Treasury Department has an important role in responding to the climate crisis while also helping many individuals save money. The Internal Revenue Service (IRS), the largest bureau in the Treasury Department, has new responsibilities under the IRA to ensure that 70% of the almost \$400 billion in climate spending be allocated towards tax incentives for various clean energy technologies.<sup>100</sup> *Public comments closed on November 4, 2022, and guidance from the IRS has started to be issued.*<sup>101</sup> Twelve attorneys general, led by Massachusetts AG Maura Healey, submitted comments urging the IRS and Treasury Department to quickly implement the IRA and to do so carefully, including by prioritizing community engagement and outreach, clarity and accessibility, inclusion of disadvantaged and low wealth communities, and methods to ensure equity throughout implementation.<sup>102</sup>

In October, the Treasury Department’s Federal Insurance Office proposed collecting climate-related risk data from over 200 large insurance companies to determine how the climate crisis is affecting both the availability and cost of property insurance.<sup>103</sup> The analysis behind this data collection is designed to determine which regions with weak property insurance infrastructure are at more risk due to natural disasters exacerbated by climate change.<sup>104</sup> *The next round of comments in this rulemaking will be due December 20, 2022.*<sup>105</sup>

The Department of Labor has also been involved in dealing with climate-related issues that could affect worker retirement, as discussed above. In February 2022, Labor’s Employee Benefits Security Administration sent out a request for information on the “Possible Agency Actions to Protect Life Savings and Pensions from Threats of Climate-Related Financial Risk.”<sup>106</sup> With this request, Labor is seeking guidance on assessing the potential financial risks that climate change poses to pensions and retirement savings.<sup>107</sup> *The comment period closed on May 16, 2022.*<sup>108</sup>

\* \* \*

These examples help illustrate the work that is being done on rulemaking across the federal government as well as the work that is needed to push the agencies to finalize rules that are robust and also equitable.





# The Importance of Public Input & A Role for Attorneys General Going Forward

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As a large number of rules begin to be finalized, public participation will be crucial to ensuring that the rules contain robust protections and rest on a sound legal basis. Offices of attorneys general can play a significant role in enforcing and enhancing the public participation protections afforded under the law to the public. They can also play a role in spreading the word about the importance of a new rulemaking to the public and advocating for funding for public participation.

This Section discusses the importance of public participation and highlights emerging issues and existing challenges.



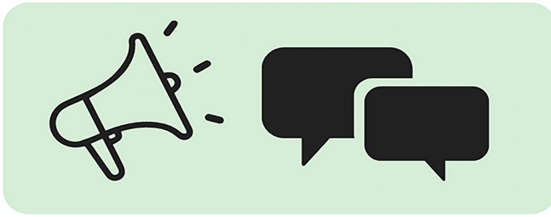
## Background

Public input is a critical component of most agency rulemaking processes and is required for certain agency rules under section 553 of the Administrative Procedure Act (APA).<sup>109</sup> It provides an opportunity for agencies to hear different perspectives and concerns, as well as ways to strengthen the agency action.

The APA's procedural requirements are designed to ensure that the public is made aware of the rules being proposed by agencies and that the public's concerns and ideas are heard before any rule or regulation is finalized and implemented. This includes concerns and input from industry, people whose environment will be affected by the decision, and any other stakeholders and interested parties. An agency is required to notify the public of a proposed rule by publishing it in the *Federal Register*. This notice sets a deadline by which the public must submit their written comments in order to be considered. After an agency has reviewed all of the comments, it will develop a final rule. The APA requires that a final rule be accompanied by a "statement of basis and purpose," which must identify the major issues of policy that the agency took into consideration as well as the agency's response to the significant issues raised in the public comments. Aside from requesting written comments as explained here, agencies can also host public hearings and meetings to hear feedback from community members and stakeholders. Agencies may also solicit public input before putting together a proposal.<sup>110</sup>

## Figure 9. Federal Rulemaking Process Under Administrative Procedure Act

### Planning Stage



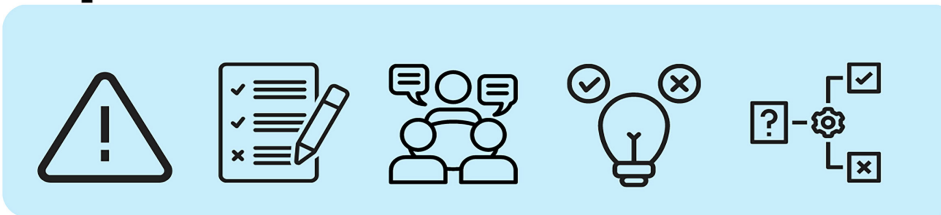
Agencies may choose to solicit information and recommendations before developing the proposed rule.

### Public Meeting



Some agencies will hold optional public hearings and meetings.

### Proposed Rule



Agencies must issue a proposed rule in the Federal Register with a comment deadline. During the proposed rule advocacy, on behalf of state AGs, community members, and organizations, is happening. Once input from public and private sectors are submitted and the deadline closes then the agency considers the feedback and begins to develop the final rule.

### Final Rule



Agencies issue the final rule with a statement of basis and purpose.

## Challenges in Building Robust Public Participation

There are often a variety of barriers to public participation in agency rulemakings and other proceedings. Most people are not sitting down with the *Federal Register* every day and then spending hours crafting comments. Lack of notice—both not knowing about a particular agency action and also not perceiving the potential impact—and lack of time and resources to fund the engagement are issues. It can also be a challenge to understand the public comment process and the roles individuals can play in shaping a regulation.

The administration recognizes the value and importance of public input. For example, as the administration implements the Bipartisan Infrastructure Law and the Inflation Reduction Act,<sup>111</sup> John Podesta, Senior Advisor to the President for Clean Energy Innovation and Implementation, explained that the administration was “asking the public questions that will make sure these tax incentives will work for them.”<sup>112</sup> Podesta added that the administration was particularly interested in input from “folks who generally don’t engage in detailed questions of tax policy, including families, workers, new clean energy industries and people living in environmental justice communities.”<sup>113</sup>

Several agencies are working on increasing public participation. The Federal Energy Regulatory Commission, for example, launched the Office of Public Participation to enhance public engagement. The Office has offered virtual workshops to walk people through the process of filing comments regarding the Commission’s proposals.<sup>114</sup> The White House also held an engagement session recently to hear about ways to make the regulatory process more accessible to the public.<sup>115</sup> Initiatives like these could help ensure that the public commenting process is used more effectively.

## A Role for Attorneys General in Addressing the Challenges of Sharing Information

Attorneys general have significant opportunities to both support additional public participation and to help spread the word about their own advocacy and the opportunities at the federal level. This Section describes a few examples, both for purposes of highlighting opportunities for AG offices as well as for illustrating AG powers in this space for advocates that may wish to engage with AG offices.

First, AGs can advocate for more funding for members of the public to engage. In Washington, for example, AG Bob Ferguson succeeded in pushing for a statute that provides community members with relevant experiences with a stipend to fund their participation in stakeholder groups.<sup>116</sup> Other states have funding to support the participation of consumer advocates in utility cases.<sup>117</sup>

Second, AGs can advocate that federal agencies do a better job soliciting public participation. For example, Massachusetts AG Maura Healey led a coalition of attorneys general and other consumer advocates in comments to the Federal Energy Regulatory Commission regarding the establishment of the Office of Public Participation.<sup>118</sup> These comments urged the Commission to look to state intervenor compensation as models for bolstering public participation in federal energy cases.<sup>119</sup> Separately, when the Federal Energy Regulatory Commission recently proposed a duty of candor rule,<sup>120</sup> the AGs pushed back explaining that the proposed rule would threaten public participation. While agreeing that accuracy and honesty is crucial, a coalition of state agencies and consumer advocates, led by AG Healey, pointed out that the stringent standard proposed could chill public participation.<sup>121</sup>

Third, AGs have a platform they can use to spread information to the public. For example, Massachusetts AG Healey held a virtual “teach-in” on how the wholesale electricity market works. She discussed how the market affects consumers and climate and produced a series of educational videos in multiple languages.<sup>122</sup> There are many examples of this in the labor sphere. For example, California AG Rob Bonta recently issued a report highlighting ten rights that workers should be aware of, including “the right to organize and join a union” and the right to a minimum wage, along with other wage-and-hour protections.<sup>123</sup> Other AGs worked to bring attention to COVID-related policies and guidance<sup>124</sup> and held workers’ rights events.<sup>125</sup>

Consumer protection is a key area where AGs are needed to communicate to the public in creative ways. Michigan AG Dana Nessel has used social media to promote timely consumer protection videos warning about potential fraud.<sup>126</sup> Minnesota AG Keith Ellison has public education materials about community solar programs, where he works to protect consumers in the new clean energy economy.<sup>127</sup>

Attorney general public education activities can include addressing the dangers of climate change. For example, New York AG Letitia James has taken several actions to make severe weather alerts available in multiple languages to bolster emergency preparedness and prevent future tragedy.<sup>128</sup> As another example, in August 2021, Oregon AG Ellen Rosenblum ordered the release of the names of people who died of hyperthermia during the heat wave that hit the state in June 2021, several of whom suffered from unsafe exposure to heat at work.<sup>129</sup> AG Rosenblum released the names to “inform the public about the impact of this historic event on affected communities, help the public assess the government’s preparedness and responsiveness, and facilitate the development of appropriate public policies that anticipate future extreme climate events.”<sup>130</sup>

As rulemaking picks up, these public education activities will become more and more important. AGs, with their many and varied powers, have a key part to play in building engagement.



# Conclusion

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It has been a busy year in the energy and climate arena with rules in development, final rules, lawsuits, and court decisions. Many different coalitions of attorneys general have been playing a role in advancing and defending environmental and energy policies. New federal legislation carries opportunities for reducing emissions. State AGs and other advocates are needed to ensure that implementation is prompt and equitable. Stay tuned.





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