

Nine Takeaways From the Inflation Reduction Act's Climate Initiatives

The Act promises to touch on almost every aspect of US climate policy.

On August 16, 2022, President Biden signed into law the Inflation Reduction Act (the Act), which expands clean and renewable energy production, jump-starts carbon reduction and sequestration technologies, accelerates decarbonization of the power sector and vehicle fleet, and promotes a host of other climate policies. In addition, the Act ushers in the largest clean energy tax credit package in US history (for more information, see this Latham [Client Alert](#)).

The Act also mandates oil and gas leases in the Gulf of Mexico and Alaska and links federal renewable development rights to fossil fuel leases, both onshore and offshore. Initial drafts of the Act included environmental permit streamlining provisions that were pulled from the final legislation after Senator Manchin agreed to delaying the measures and moving them into a separate piece of legislation later in the fiscal year.

The Act is likely to transform US climate and environmental policies. This Client Alert presents nine takeaways from the Act, including its provisions aimed at spurring transmission line development to bring wind and solar power to major urban centers; bolstering grid reliability; cutting methane emissions with new fees and mitigation programs; boosting electric vehicle sales; funding green banks for clean technology projects; advancing environmental justice programs; and propping up a myriad of other climate and clean energy initiatives.

1. Spurring Transmission Line Development and Funding

The US's existing transmission infrastructure remains a major bottleneck to delivering renewable power from wind and solar projects to major urban centers. Despite years of federal attempts to accelerate new transmission development, it continues to lag woefully behind projected demand to decarbonize the power sector. The Act attempts to turn the tide with several major funding initiatives. Senator Manchin's environmental permit streamlining initiative is also expected to be aimed at quickening the pace of transmission approvals and development.

To boost transmission line development needed for delivering renewable power and supporting grid reliability, the Act appropriates \$2 billion for the Department of Energy (DOE) to make direct loans through 2031 to non-federal entities to construct or modify electric transmission facilities that have been

designated “necessary in the national interest” under Section 216(a) of the Federal Power Act.¹ To speed up the permitting process for transmission infrastructure, the Act appropriates \$760 million² for the DOE to make grants to federal, state, and local siting authorities who oversee the approval and placement of transmission infrastructure.

The grants may fund, among other things: (i) analyzing the impacts of “covered transmission projects”; (ii) examining alternate siting corridors; (iii) hosting negotiations and settlement meetings to address issues preventing project approval; (iv) siting authority participation in federal and state regulatory proceedings; and (v) “[o]ther measures and actions that may improve the chances of, and shorten the time required for, approval by the siting authority” for covered transmission projects.³ Grant funds are also earmarked for economic development activities for communities that may be impacted by a covered transmission project’s construction or operation.⁴

With a focus on accelerating offshore wind, the Act appropriates \$100 million⁵ for the DOE to explore, encourage, and develop the transmission of electricity generated by offshore wind across state lines and facilitate interregional transmission infrastructure. The DOE will use the funding to analyze renewable energy zones, the effects of climate change on grid resiliency, bulk power system expansions, the effects of increased electrification, and the interconnection of a national networked grid.⁶ These efforts will aid in unlocking offshore wind’s vast potential as an energy-generating source and continue the nation’s push toward cleaner and greener energy consumption.

2. Imposing Fees on Methane Emissions and Other Reduction Programs

Methane is a potent greenhouse gas with roughly 80 times the global warming potential of carbon dioxide over a 20-year timespan.⁷ The Act takes aim at methane emissions in the oil and gas industry through the introduction of a “waste emissions charge” on applicable oil and gas facilities⁸ that report emissions in excess of 25,000 metric tons of carbon dioxide equivalent gas per year, and exceed a certain waste emissions threshold. The waste emissions charge represents the first federal fee on methane — and indeed is the first time that Congress has directly imposed a charge, fee, or tax on greenhouse gas emissions.⁹ The charge is designed to encourage the capture and productive use of emitted methane in lieu of venting and flaring.

The charge will be levied annually based on emissions reported under the EPA’s Greenhouse Gas Emissions Reporting Program, which will also be revised to establish empirical accuracy of the calculations. The waste emissions threshold is the reported metric tons of methane emissions from a covered facility that exceed a certain percentage of the product sold from or through the facility. The charge is then calculated by multiplying the amount of the methane exceedance in metric tons by a fixed amount that will be increased over the coming years. The charge will be equal to the product of the number of reported methane emissions that exceed the waste emissions threshold and \$900 per ton emitted in 2024, rising to \$1,200 per ton emitted in 2025, and rising once more to \$1,500 per ton emitted in 2026 and any following year. These charges represent a substantial increase in pressure and financial obligation on methane emitters.

Waste emissions thresholds, set based on facility type, exempt some amount of methane emissions from the waste emissions charge. Exemptions may cover emissions resulting from delays related to implementing methane mitigation measures, emissions from facilities in compliance with the methane emissions requirements of Section 111 of the Clean Air Act, and emissions from plugged wells.¹⁰

Methane mitigation and monitoring is given a boost with \$1.55 billion for various grants, rebates, and loan programs to provide financial and technical assistance to implement methane mitigation and

monitoring measures. Owners and operators of applicable facilities are eligible to the extent they are improving the climate resiliency of their facilities, installing or developing equipment that reduces methane, permanently plugging wells, or mitigating the health effects of legacy pollution in low-income communities. Moreover, \$850 million is appropriated to support industrial facilities conversion to lower-emitting technologies, while \$700 million is appropriated to support upgrading conventional gas wells with methane reduction measures.¹¹

3. Boosting Electric Vehicles and Alternative Vehicle Fuels

The Act introduces a number of significant changes to incentivize new electric vehicles and includes a long-term extension of the Alternative Fuel Refueling Property tax credit through 2032.¹² These changes are anticipated to boost sales of new clean vehicles in the US, thus helping achieve the target announced by President Biden in August 2021 that 50% of all new cars sold by 2030 will be electric vehicles.¹³ The transportation sector represents 29% of 2019 gross US greenhouse gas emissions and requires substantial decarbonization to achieve the US's Paris Agreement goals.¹⁴

For new electric vehicles, the Act eliminates the manufacturer's phase-out cap, a victory for several major electric vehicle manufacturers. The tax credit previously phased out after automakers produced 200,000 electric vehicles.¹⁵ The Act broadens eligibility to all "new clean vehicles," which include "any new qualified fuel cell motor vehicle."¹⁶ While the credit value for vehicles of less than 14,000 pounds gross vehicle weight rating remains at \$7,500, the credit value for all other vehicles has been increased to \$40,000 under the Act (previously \$15,000 for vehicles between 14,000 and 26,000 pounds, and \$30,000 for vehicles over 26,000 pounds).¹⁷ The Act also allows for tax credits to lower the costs for families and business and make electric vehicles more affordable to the general public.¹⁸

The Act imposes key restrictions on the eligibility for credits related to US manufacturing, including domestic content. One of the most significant restrictions provides that the percentage of the value of the applicable critical minerals that were extracted or processed in the US, or in any country with which the US has a free trade agreement in effect, or were recycled in North America, must meet a certain threshold — starting from 40% before 2024 and rising to 100% by 2028.¹⁹ The Act ties the increased tax credits to US manufacturing goals given a desire to enhance domestic mineral production and manufacturing capacity.

The Act includes measures to incentivize the development of alternative fueling stations throughout the US. Lack of access to convenient electric vehicle charging stations remains a significant hurdle to the large-scale deployment of electric vehicles. The Act chips away at this need by extending the Alternative Fuel Refueling Property tax credit, which expired on December 31, 2021, to December 31, 2032.²⁰ Eligible alternative fuel stations include, among other types, stations dispensing fuel that is at least 85% by volume of one or more of ethanol, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen. The tax credit is also available to biofuel stations and certain electric charging stations and raises the per-refueling property credit limitation from \$30,000 to \$100,000.²¹

4. Facilitating Onshore and Offshore Oil and Gas Lease Sales

The Act reflects a compromise to support traditional energy sources in the near term, and a congressional reaction to the Biden Administration's early attempt to "pause" oil and gas leasing of federal lands and waters. The Act reinstates Lease Sale 257, and mandates that certain other offshore oil and gas lease sales in the Gulf of Mexico and Alaska take place by 2023.

Specifically, the Act directs the Department of the Interior to:

- by September 15, 2022, accept the highest bid received for Lease Sale 257, which was vacated by US District Court for the District of Columbia in January 2022; and
- move forward with Lease Sale 258 in Alaska Region's Cook Inlet and Lease Sales 259 and 261 in the Gulf of Mexico by March 2023 and September 2023, respectively, notwithstanding the expiration of the Outer Continental Shelf Oil and Gas Leasing Program in 2022.²²

The Act also — again for the first time and in response to fears that the Biden Administration would refuse to hold oil and gas lease sales — ties issuance of federal wind and solar development rights to those for oil and gas leases for a 10-year period of time. The Act requires the federal government to offer for sale 60 million acres in offshore oil and gas leases during the one-year period before an offshore wind lease is issued on the Outer Continental Shelf.²³

Rights-of-way for wind or solar energy developments on federal land may not be issued unless:

- an onshore oil and gas lease sale takes place during a 120-day period before the right-of-way is granted; and
- the sum of the acres offered for lease in onshore oil and gas in the one-year period before the right-of-way is granted is the lesser of
 - 2 million acres; and
 - 50% of the acreage for which expressions of interest have been submitted for lease sales.²⁴

Drawing from certain provisions in the Build Back Better legislative proposal, the Act imposes higher costs on oil and gas activities through higher royalty rates, higher rental rates, minimum bids, fees for submitting expressions of interest, and eliminating non-competitive leasing. For example, the Act increases the minimum offshore and onshore royalty rate from 12.5% to 16.66%,²⁵ increases the minimum bid for onshore oil and gas from \$2 to \$10 per acre, and sets annual rental rates at between \$3 and no less than \$15 per acre depending on the rental period.²⁶

5. Funding Green Banks

Green banks are publicly capitalized entities intended to provide access to low-cost capital and facilitate private investment into clean energy projects, including but not limited to renewable energy, energy efficiency, infrastructure resilience, transportation electrification, climate mitigation, and other adaptation activities. Green financing already exists in certain states, including California, Connecticut, Colorado, Florida, Maryland, and New York, but the Act creates the first federal-level green financing model.

The Act allocates \$27 billion to a “Greenhouse Gas Reduction Fund” that will be administered by the EPA.²⁷ By using financing, not grants, capital is expected to be repaid, which creates a multiplier effect in which a single taxpayer dollar can be recycled and lent multiple times to facilitate a clean energy transition. Green banks generally target market sectors in which payback is expected and lent to proven, technically viable projects that are well past the research and development stage.

The Act divides the \$27 billion appropriation into three funding streams for green bank investments:

- The first funding stream authorizes \$7 billion for “low-income and disadvantaged communities to deploy or benefit from zero-emission technologies.”
- The second funding stream features \$8 billion to support low-income and disadvantaged communities by funding direct or indirect investments in renewable energy projects that would otherwise lack access to financing.
- The third funding stream features \$12 billion that can be used broadly to support eligible direct and indirect investments in renewable energy projects nationwide.

State, local, and tribal governments, along with certain non-governmental agencies, are eligible to apply for green bank funds. Eligible non-governmental recipients are limited to nonprofit organizations that are (i) designed to provide capital, leverage private capital, and provide other forms of financial assistance for rapid development of renewable energy projects; (ii) do not take deposits other than deposits from repayments and other revenue received from financial assistance provided using grant funds under the Act; (iii) are funded by public or charitable contributions; and (iv) invest in or finance projects alone or in conjunction with other investors.²⁸

6. Funding Environmental Justice Initiatives

Over the past 18 months, the Biden Administration has signed a multitude of Executive Orders and launched ambitious initiatives designed to advance environmental and climate justice (EJ) initiatives. The Act enhances the Biden Administration’s EJ agenda and directs billions of dollars in funding toward initiatives designed to achieve reductions in greenhouse gas emissions, air quality emissions and other legacy air pollution; and increase affordable and accessible clean energy for disadvantaged communities. Investments vary across programs, including:

- the \$27 billion Greenhouse Gas Reduction Fund discussed above, which will provide financial and technical assistance grants to states, municipalities, Native American tribes, and other eligible recipients to provide funds for low-income and disadvantaged communities to benefit from zero-emissions technologies;²⁹
- nearly \$3 billion in environmental and climate justice block grants for community-led projects in disadvantaged communities and community capacity building centers to address the harms caused by legacy air pollution;³⁰
- nearly \$2 billion in neighborhood access and equity grants to improve walkability, safety, and affordable transportation;³¹
- \$3 billion to reduce air pollution at ports, of which \$750 million is designated for use in areas where air pollution levels exceed national ambient air quality standards, or so-called, non-attainment areas;³²
- \$60 million to reduce diesel emissions from servicing goods movement facilities located in low-income and disadvantaged communities;³³ and
- \$32.5 million to support the Council on Environmental Quality’s efforts to, among other things, support data collection to track the disproportionate effects of climate change on disadvantaged communities.³⁴

7. Advancing Forest Service and EPA Wildfire Risk Reduction Programs

Wildfire risk reduction programs offer relief for Western forests burdened with heavy, dry fuel loads and extreme fire risks. The Act provides \$2.15 billion to the United States Forest System for National Forest System restoration and fuels reduction. The Act appropriates \$1.8 billion to the Department of Agriculture to reduce hazardous fuels within the National Forest System and wildland-urban interface.³⁵ This funding will support wildfire prevention activities, such as tree thinning, undergrowth removal, and prescribed fire to protect structures and communities. These activities can change fire behavior by creating disruptions in fuel patterns to slow the spread of wildfires, thus reducing their negative impacts. The additional \$200 million is allocated for vegetation management, which strives to enhance the ecological integrity of the forest system.³⁶

The Act's environmental and climate justice block grants, discussed above, provide a total of \$3 billion in EPA grants awardable to eligible disadvantaged communities to carry out various climate mitigation activities, including mitigating climate and health risks from wildfires. Technical assistance for the wildfire risk reduction programs is provided by the EPA in connection with grants for disadvantaged communities.

8. Supporting Climate Reporting Obligations

Companies worldwide are increasingly issuing environmental, social, and governance (ESG) and sustainability reports. It is estimated that 90% of companies based in North America issue reports that cover sustainability or climate-related issues.³⁷ These reports often disclose information concerning the issuing company's greenhouse gas emissions. The rise in ESG reporting is driven both by changing consumer preferences and shareholder and stakeholder demand. Consumers are increasingly evaluating companies' consideration of climate- and sustainability-related issues when they make purchasing decisions. And, as recently noted by the Securities and Exchange Commission (SEC), several major institutional investors have sought climate-related information from the companies in which they invest.³⁸ In line with these consumer and investor demands, the Act provides funding to support the standardization of climate reporting.

Section 60111 of the Act allocates \$5 million to the EPA to use through 2031 to support (i) enhanced standardization and transparency of corporate climate action commitments and plans to reduce greenhouse gas emissions; (ii) enhanced transparency regarding progress toward meeting such commitments and implementing such plans; and (iii) progress toward meeting such commitments and implementing such plans.³⁹

9. Passing on Permit Streamlining Legislation

Despite Senator Manchin's focus on streamlining environmental review for infrastructure and energy projects, provisions for permit streamlining did not make it into the final Act. Senator Manchin's office has highlighted proposed legislative changes related to permit streamlining, including:

- a two-year limit on environmental review for major projects, as well as other time limits for agency action;
- time limits on judicial review of agency approvals;
- changes to the permitting process under the Clean Water Act; and
- expanding the eligibility criteria for streamlined review by the Federal Permitting Improvement Steering Council to include smaller projects.

Streamlining provisions are expected to be reintroduced as separate legislation in the coming months, potentially with support from President Biden, Senate Majority Leader Chuck Schumer, and House Speaker Nancy Pelosi.⁴⁰

Conclusion

The Inflation Reduction Act touches on almost every aspect of US climate policy and puts the country on a trajectory toward meeting President Biden's long-term greenhouse gas reduction goals. Latham's Environment, Land & Resources Practice will continue to track developments related to the Act's implementation.

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Endnotes

¹ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 50151(a) & (b), 136 Stat. 1818, 2046 (2022).

² Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 50152(a), 136 Stat. 1818, 2046-47 (2022).

³ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 50152(b)(1), 136 Stat. 1818, 2047 (2022).

⁴ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 50152(b)(2), 136 Stat. 1818, 2047 (2022).

⁵ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 50153(a), 136 Stat. 1818, 2048 (2022).

⁶ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 50153(b), 136 Stat. 1818, 2048-49 (2022).

⁷ See United Nations Environment Programme (2021), <https://www.unep.org/news-and-stories/story/methane-emissions-are-driving-climate-change-heres-how-reduce-them>.

⁸ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 60113(d), 136 Stat. 1818, 2074 (2022). "Applicable facilities are Offshore petroleum and natural gas production. "(2) Onshore petroleum and natural gas production. "(3) Onshore natural gas processing. "(4) Onshore natural gas transmission compression. "(5) Underground natural gas storage. "(6) Liquefied natural gas storage. "(7) Liquefied natural gas import and export equipment. "(8) Onshore petroleum and natural gas gathering and boosting. "(9) Onshore natural gas transmission pipeline."

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- ⁹ See Congressional Research Service, *Inflation Reduction Act Methane Emissions Charge: In Brief* (August 4, 2022), available at <https://crsreports.congress.gov/product/pdf/R/R47206>
- ¹⁰ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 60113, 136 Stat. 1818, 2073-76 (2022).
- ¹¹ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 60113, 136 Stat. 1818, 2073-76 (2022).
- ¹² See Internal Revenue Code, Sec. 30C-D.
- ¹³ See The White House Briefing Room, *President Biden Announces Steps to Drive American Leadership Forward on Clean Cars and Trucks* (August 5, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/05/fact-sheet-president-biden-announces-steps-to-drive-american-leadership-forward-on-clean-cars-and-trucks/>.
- ¹⁴ See UNFCCC, *The United States of America Nationally Determined Contribution* (April 21, 2021), available at <https://unfccc.int/sites/default/files/NDC/2022-06/United%20States%20NDC%20April%2021%202021%20Final.pdf>.
- ¹⁵ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 13401, 136 Stat. 1818, 1954-62 (2022).
- ¹⁶ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 13401, 136 Stat. 1818, 1954-62 (2022).
- ¹⁷ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 13403, 136 Stat. 1818, 1964-66 (2022).
- ¹⁸ U.S. Department of Treasury, *Treasury Releases Initial Information on Electric Vehicle Tax Credit Under Newly Enacted Inflation Reduction Act* (August 16, 2022), available at <https://home.treasury.gov/news/press-releases/jy0923>.
- ¹⁹ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 13401, 136 Stat. 1818, 1954-62 (2022).
- ²⁰ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 13404, 136 Stat. 1818, 1966-69 (2022).
- ²¹ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 13404, 136 Stat. 1818, 1966-69 (2022).
- ²² Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 50264, 136 Stat. 1818, 2059-60 (2022).
- ²³ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 50265(b)(2), 136 Stat. 1818, 2061 (2022). The Act also requires that if any acceptable bids have been received for any tract offered in an oil and gas lease sale, the sale results in the issuance of a lease.
- ²⁴ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 50265(b)(1)(B), 136 Stat. 1818, 2061 (2022).
- ²⁵ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 50261-50262, 136 Stat. 1818, 2056-58 (2022).
- ²⁶ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 50262, 136 Stat. 1818, 2056-58 (2022).
- ²⁷ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 60103, 136 Stat. 1818, 2065-67 (2022).
- ²⁸ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 60103(c)(1)(A)-(D), 136 Stat. 1818, 2067 (2022).
- ²⁹ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 60103, 136 Stat. 1818, 2065-67 (2022).
- ³⁰ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 60201, 136 Stat. 1818, 2078-79 (2022).
- ³¹ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 60201, 136 Stat. 1818, 2078-79 (2022).
- ³² Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 60102, 136 Stat. 1818, 2064-65 (2022).
- ³³ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 60104, 136 Stat. 1818, 2067-68 (2022).
- ³⁴ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 60401, 136 Stat. 1818, 2079-80 (2022).
- ³⁵ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 23001(a)(1), 136 Stat. 1818, 2023 (2022).
- ³⁶ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 23001(a)(2), 136 Stat. 1818, 2023 (2022). And additional \$500 million was appropriated to carry out projects for the conservation, protection, and resiliency of lands and resources administered by the National Park Service and Bureau of Land Management, as well as to carry out conservation, ecosystem and habitat restoration projects these lands. Sec. 50221-50222
- ³⁷ KPMG, *The Time Has Come: The KPMG Survey of Sustainability Reports* (2020), available at https://assets.kpmg/content/dam/kpmg/be/pdf/2020/12/The_Time_Has_Come_KPMG_Survey_of_Sustainability_Reporting_2020.pdf.
- ³⁸ SEC, *Proposing Release on The Enhancement and Standardization of Climate-Related Disclosures for Investors*, § I.C.1, available at <https://www.sec.gov/rules/proposed/2022/33-11042.pdf>.
- ³⁹ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 60111(a), 136 Stat. 1818, 2072 (2022). Interestingly, Section 60111 defines “greenhouse gas” to mean the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride.” While this is largely consistent with the EPA’s definition of “greenhouse case,” Section 60111 omits nitrogen trifluoride, a synthetic greenhouse gas used in the manufacturing of flat-panel displays, photovoltaics and light-emitting diodes (LEDs).
- ⁴⁰ Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 50301-50303, 136 Stat. 1818, 2062-63 (2022). The Act did provide a total of \$345 million to the Department of Energy, the Federal Energy Regulatory Commission and six Interior Department agencies for the “hiring and training of personnel, the development of programmatic environmental documents, the procurement of technical or scientific services for environmental reviews, the development of environmental data or information systems, stakeholder and community engagement, and the purchase of new equipment for environmental analysis to facilitate timely and efficient environmental reviews and authorizations.”