

The Inflation Reduction Act's Waste Emission Charge — What Did Congress Require and How is EPA Proposing to Implement the Program?

By Carrie Jenks

February 2, 2024

On January 12, 2024, the Environmental Protection Agency (EPA) released proposed regulations to implement the Inflation Reduction Act's (IRA) Waste Emission Charge (WEC).¹ Through the addition of section 136 to the Clean Air Act (CAA), Congress directed EPA to impose and collect this annual charge on methane emissions beginning in 2024 at \$900 per metric ton of methane, increasing to \$1,200 per metric ton in 2025, and \$1,500 per metric ton in 2026 and thereafter.²

While the statute specifies the amount and timing of the charge and certain exemptions, it also directs EPA to implement the WEC provisions. In this legal analysis, we explain how the text of the IRA established the framework that EPA must follow, and the flexibility that EPA may be able to include in the final rule consistent with the statute. (The appendix includes definitions of terms used in the IRA and proposed WEC that we use throughout our analysis). We also note areas where EPA has requested comment on its interpretation of the IRA's language, and we highlight potential tension points for stakeholders as they consider how to implement programs to comply with this rule as well as the additional EPA rules for the oil and natural gas sector.

EPA has extended the [comment period on the WEC proposal to March 26, 2024](#).

To assess the implications of the WEC, we explore four questions:

- What entities must pay the WEC?
- What categories of emissions are included in the calculation of the WEC?
- What exceptions can companies qualify for, and what is the timing for such exceptions?
- How can a company “net” its emission to reduce its WEC?

EPA's Related Rulemakings

In addition to understanding the WEC proposal, stakeholders will be evaluating it in the context of [two related EPA rulemakings](#).

First, [EPA recently finalized the Standards of Performance for New, Reconstructed, and Modified Sources \(NSPS\) and Emission Guidelines \(EG\) for Existing Sources: Oil and Natural Gas Sector Climate Review \(NSPS 0000b/EG 0000c\)](#) under section 111 of the CAA.³ This final rule, among other provisions, requires owners and operators to install emission control technologies and increase their monitoring for unintended methane emission leaks. As a result, EPA projects significant emission reductions from the segments covered by the rule. EPA explains in the WEC proposal that, “the sooner facilities adopt the methodologies and technologies

¹ Waste Emissions Charge for Petroleum and Natural Gas Systems, 89 Fed. Reg. 5318-5381 (Jan. 26, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-01-26/pdf/2024-00938.pdf>. Any WEC fees would revert to the United States Treasury. 89 Fed. Reg. 5362.

² 42 U.S.C. § 7436.

³ Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 40 CFR Part 60 (Dec. 2023), https://www.epa.gov/system/files/documents/2023-12/eo12866_oil-and-gas-nsps-eg-climate-review-2060-av16-final-rule-20231130.pdf.



required by those rules, the lower their assessed WEC” and that at full implementation “EPA expects many of the WEC-affected facilities will be below the WEC emissions thresholds.”⁴

Second, EPA proposed revisions in August 2023 to its GHG reporting program for the oil and natural gas sectors—subpart W under of the Greenhouse Gas Reporting Program (GHGRP).⁵ In the IRA, Congress directed EPA to revise the rule, and EPA’s proposed revisions are intended to “improve the accuracy of reported emissions” and to incorporate empirical data.⁶ Since the IRA requires the WEC to be calculated based on the subpart W emissions reported to EPA, how EPA finalizes those revisions will affect the charge for applicable facilities.

What Entities Are Covered Under the WEC?

*WEC Applicable Facilities*⁷

The Inflation Reduction Act requires EPA to focus on high-emitting oil and gas facilities—those with emissions reported under subpart W greater than 25,000 mt CO₂ equivalent (CO₂e) of greenhouse gases emitted per year in the following GHGRP segments:

1. 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 pipelines⁸

To implement this, EPA relies on the structure of subpart W but notes that some entities may report emissions in more than one of these GHGRP segments within the industry. In such cases, EPA proposes to assess whether such an entity exceeds the 25,000 mt CO₂e threshold based on the total facility GHG emissions reported to subpart W across all of its segments.⁹ EPA points to section 136(d) of the IRA which includes the term “within” the nine industry segments supports this approach.¹⁰ EPA explains that Congress did not specify that a WEC applicable facility is in only one segment. EPA notes that its review of historic data indicates that its proposed approach would not “result in a significant number of facilities being regulated under WEC compared to an approach that assessed the applicability of using subpart W CO₂e for each individual industry segment at a facility.”¹¹ Thus, EPA defines such entities as WEC applicable facilities and

⁴ 89 Fed. Reg. 5321.

⁵ Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems, 88 Fed. Reg. 50282 (Aug. 2023), <https://www.govinfo.gov/content/pkg/FR-2023-08-01/pdf/2023-14338.pdf>.

⁶ 89 Fed. Reg. 5322.

⁷ We use the terms defined in the proposed rule throughout this analysis. Our appendix includes those definitions as a reference.

⁸ 42 U.S.C. § 7436(d).

⁹ 89 Fed. Reg. 5324.

¹⁰ *Id.*

¹¹ *Id.*



any owner or operator of such a facility is covered by the WEC and must pay an annual fee if it exceeds the IRA's specified waste emission thresholds.

However, EPA is requesting comments on an alternative approach that assesses the applicability threshold at the individual segment rather than the total facility's emissions across all segments.¹²

What emissions are included in the calculation of the WEC?

Facility Applicable Emissions

The IRA specifies industry segment-specific methane intensity thresholds and directs EPA to assess a facility's charge based on the natural gas throughput—the methane emissions based on the natural gas or oil sent to sale from or through a facility—as reported under subpart W.¹³

If facilities are in multiple industry segments, EPA proposes that each industry segment be assessed separately and then summed to determine the facilities applicable emissions.¹⁴

What exceptions may apply?

WEC Applicable Emissions – Emissions on which the Charge is based after Consideration of the IRA's Exemptions

The IRA includes three exemptions from the waste emission charge. EPA proposes that the IRA exemptions are only available to those facilities whose emissions exceed the waste emissions threshold and are, therefore, subject to the WEC. Thus, once a facility calculates its facility applicable emissions, its WEC applicable emissions are those that remain after applying the three exemptions, described below.

Unreasonable Permitting Delay Exemption

Section 136(f)(5) of the IRA states that the WEC does not apply to emissions from onshore and offshore petroleum and natural gas production facilities that result from “unreasonable delay” in environmental permitting of “gathering or transmission infrastructure necessary for offtake of increased volume as a result of methane emissions mitigation implementation.”¹⁵ The IRA directs EPA to determine “unreasonable delay.”¹⁶

EPA proposes to define unreasonable delay as cases that meet four criteria.

- (1) the facility must have emissions that exceed the waste emissions threshold;
- (2) the entity seeking the exemption and the entity responsible for seeking the permit has not contributed to the delay;

¹² *Id.*

¹³ 42 U.S.C. § 7436(c).

¹⁴ For additional background see EPA's supporting materials for the rule, available at <https://www.epa.gov/inflation-reduction-act/waste-emissions-charge>.

¹⁵ 42 U.S.C. § 7436(f)(5).

¹⁶ *Id.*



- (3) the exempted emissions are those resulting from the flaring of gas that would have been mitigated without the permit delay, and any flaring is in compliance with any applicable regulations; and
- (4) a set period of months (EPA is proposing 30-42 months) has passed from the time a submitted permit application was determined to be complete by the applicable permitting authority.¹⁷

As an alternative to establishing a set period of time, EPA notes it also considered a case-by-case determination that EPA would decide based on information submitted by the WEC obligated party.¹⁸ EPA explains that while such a proposal would ensure “that all applicable waste emissions for each facility are subject to charge”, EPA did not propose this due to the time and resources that it would require to implement and because the “process would result in uncertainty for industry and could lead to a significant backlog, thus making the annual calculation of the WEC unduly burdensome.”¹⁹ EPA requests comments on the four criteria and additional alternatives EPA could consider in implementing this exemption.

Regulatory Compliance Exemption

The IRA also establishes a regulatory compliance exemption for subpart W facilities that are “subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111”²⁰

This regulatory exemption, therefore, links the WEC to facilities’ compliance with EPA’s separate rule recently finalized under section 111— Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (NSPS 0000b/EG 0000c).²¹

Congress included two criteria for when this exemption can apply:

- (1) “methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 have been approved and are in effect in all States with respect to the applicable facilities” and
- (2) “compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by [the NSPS 0000b/EG 0000c 2021 Proposal], if such rule had been finalized and implemented.”²²

For the first criteria, stakeholders have debated the words “all states” and “with respect to the applicable facilities” to assess whether Congress intended the exemption to only apply once every state has a state or federal plan in place pursuant to section 111(d) or whether it should apply to WEC applicable facilities on a state-by-state basis once a state has an approved 111(d) plan. EPA proposes that the exemption applies to “all eligible WEC applicable facilities in all states at the same time.”²³ EPA explains that it reads the word

¹⁷ 89 Fed. Reg. 5332-5334. EPA notes that these criteria “only apply in the context of determining eligible emission exemptions for the implementation of CAA 136(f)(5) and this proposed rulemaking; they are not intended to speak to the reasonableness of a permitting delay in any other context.”

¹⁸ *Id.* at 5334-5335.

¹⁹ *Id.* at 5335.

²⁰ 89 Fed. Reg. 5336; see also 42 U.S.C. § 7436(f)(6).

²¹ Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 40 CFR Part 60 (Dec. 2023). Under CAA section 111(d), states must establish, implement, and enforce standards of performance for existing sources. However, if a state fails to submit a satisfactory and timely plan, EPA can implement a federal plan.

²² 89 Fed. Reg. 5336.

²³ *Id.* at 5338.



“all” to mean that every state plan must be approved by EPA before the administrator can make a determination that the regulatory exemption is available.²⁴

However, EPA requests comments on whether it should interpret the first part of the exemption on a state-by-state basis.²⁵ In addition to concluding that such an interpretation is inconsistent with the statutory text, EPA explains that such an alternative interpretation would also be complicated to implement as the exemption would become available to different states at different times and could “unfairly advantage and disadvantage WEC applicable facilities or companies based on their geographic location.”²⁶

Additionally, EPA proposes to interpret this exemption as taking effect when all state and federal plans are approved and not once all compliance deadlines for new and existing sources have passed. Under this proposed approach, this regulatory exemption would apply once all state plans are approved, even if the actual compliance deadlines under the plans would not come into effect until later. However, EPA requests comments on an alternative interpretation related to Congress’s use of “in effect”, whereby the regulatory exemption would only apply after all compliance deadlines had passed.²⁷ EPA explains that this alternative interpretation would result in delaying the availability of the regulatory exemption for many years even if facilities were otherwise complying with all *applicable* requirements.²⁸

For this first criterion, EPA also states it considered whether to make this exemption available to 111(b) new and modified facilities before the 111(d) existing facilities.²⁹ Given the timing for the submission of 111(d) plans, EPA notes that requirements for 111(b) facilities will be fully implemented several years in advance of any requirements applying to existing sources. However, EPA explains that it rejected separating the timing for new and existing sources based on the IRA’s text—the use of “and”.³⁰ EPA also notes the practical difficulties of exempting new sources under 111(b) given the structure of calculating the WEC based on subpart W facility emissions, which includes both 111(b) new and 111(d) existing facilities.

For the second criterion, EPA states that the IRA requires EPA to determine whether the final “methane emissions standards and plans’ provide equivalent or greater emissions reductions than would have been achieved by the 2021 NSPS 0000b/EG 0000c Proposal, had that proposal been finalized and implemented as proposed.”³¹ However, EPA notes that because states’ 111(d) will not be finalized for several years, EPA cannot propose an equivalency determination at this time. Rather, EPA plans to take an administrative action once all section 111(d) plans (state or federal plans) have been approved.³²

Relatedly, EPA is proposing to determine this emissions reduction equivalency on a national basis—“comparing the national-level emissions reductions that would have been achieved under the NSPS 0000b/EG 0000c 2021 Proposal (if finalized as proposed) against those that will be achieved upon

²⁴ See 89 Fed. Reg. 5338 for a detailed discussion.

²⁵ *Id.* at 5339.

²⁶ *Id.*

²⁷ For example, under this alternative interpretation, the exemption would not be available until after all of the compliance dates, which could be in 2029—36 months after all states submit their plans to EPA for approval.

²⁸ *Id.*

²⁹ *Id.* at 5340.

³⁰ *Id.*

³¹ *Id.* at 5338.

³² *Id.*



implementation of the final NSPS 0000b/EG 0000c.”³³ EPA states that this proposed approach is consistent with the statutory text that refers to the collective methane emission standards and plans.³⁴

A final part of this exemption relates to the IRA’s use of the term “in compliance” in section 136(f)(6). EPA proposes that a WEC applicable facility “would not be eligible for the regulatory compliance exemptions if any CAA section 111(b) or (d) facility that is contained within the WEC applicable facility has one or more violations of any methane emissions requirements under the applicable NSPS or state or Federal plan.”³⁵ EPA explains that because Congress did not include any “mitigating language”, EPA believes this approach is most consistent with the plain language of the IRA.³⁶ In practice, any reporting violation or any large emissions event due to a violation of a section 111 requirement would trigger the WEC being applied to the WEC applicable facility for the year.³⁷

EPA, however, requests comments on this proposed interpretation and explains the alternatives it considered. For example, EPA evaluated whether to apply a specific quantitative threshold, but notes that a single deviation could result in significant emissions while another facility could have numerous deviations that, even collectively, result in a small amount of excess emissions.³⁸

Plugged Well Exemption

The third exemption under IRA section 136(f)(7) applies to emissions from any well that has been “permanently shut-in and plugged in the previous year in accordance with all applicable closure requirements, as determined by the Administrator.”³⁹

To implement this exemption, EPA proposes to apply it to wells in the onshore and offshore petroleum and natural gas production industry segments and not to wells in other segments.⁴⁰ EPA explains that production wells are “distinctly different in purpose and emission profiles than underground storage wells” but EPA requests comments on this approach.⁴¹

EPA proposes to define a “permanently shut-in and plugged well” as one that “has been permanently sealed to prevent any potential future leakage of oil, gas, or formation of water into shallow sources of potable water, onto the surface, or into the atmosphere.”⁴² EPA proposes that the date for permanently shut-in and plugged would be the date a metal plate cap or cap has been welded or cemented onto the casing end.⁴³

In terms of applicable requirements, EPA is not proposing to include notification, reporting, and site remediation as part of the exemption requirements because “closure of the well is the key activity impacting methane emissions, which is the focus of the WEC.”⁴⁴ However, EPA requests comments on this proposed approach.

³³ *Id.* at 5341.

³⁴ *Id.*, citing 42 U.S.C. § 7436(f)(6)(A)(ii).

³⁵ *Id.* at 5344.

³⁶ *Id.* at 5345.

³⁷ *Id.*

³⁸ *Id.*

³⁹ 42 U.S.C. § 7436(f)(7).

⁴⁰ 89 Fed. Reg. 5347.

⁴¹ *Id.*

⁴² *Id.* at 5348.

⁴³ *Id.*

⁴⁴ *Id.*



How can a company “net” its emissions to reduce its WEC?

Congress directs EPA in IRA section 136(f)(4) to allow WEC applicable facilities under “common ownership or control” to net emissions from facilities exceeding the waste emissions threshold with emissions from facilities below the waste emissions threshold “within and across all applicable segments” listed in section 136(d) and defined by subpart W.⁴⁵

To implement this language, EPA proposes that each WEC applicable facility would be associated with a single WEC obligated party, and WEC applicable facilities with a common WEC obligated party can net emissions to calculate the WEC obligated party’s total WEC obligation.⁴⁶ For this part, EPA looks to Congress’s use of “owner” and “operator” to conclude that netting would not be allowed at the parent company level if the parent has multiple and distinct owners and operators.⁴⁷ EPA explains that subpart W refers to the owner or operator, not the parent company and “Congress was likely aware of this definition when it enacted section 136.”⁴⁸ However, EPA is requesting comments on both the proposed approach and on the alternative of using the parent company for purposes of netting.

Additionally, EPA states that it is proposing that only WEC applicable facilities can net, and only WEC applicable emissions may be netted. Thus, emissions from the following would not be eligible to net:

- facilities that report less than 25,000 mt CO₂e under subpart W (because they are not subject to the WEC)
- facilities that receive a regulatory compliance exemption (because that facility would have zero WEC applicable emissions).⁴⁹

Potential implications of the proposed rule in light of other EPA rules for the oil and natural gas sector

It is important to understand the parameters Congress established in the IRA for the WEC in order to assess the constraints EPA is working within, and identify flexibilities that may be available as it finalizes the rule. The broader context is also important to consider, including how the WEC interacts with the other rules EPA is developing for the oil and natural gas sector and the two cases before the Supreme Court on whether judges should defer to agencies’ interpretation of gaps and ambiguities in the laws they implement under the Chevron doctrine. ([For additional detail on the Supreme Court cases, see our Chevron Doctrine resources here.](#))

In terms of the statutory constraints and interaction of other rulemakings, one example is Congress’s limitation on the regulatory exemption to those entities that remain “in compliance” with EPA’s section 111 NSPS 0000b/EG 0000c regulations. The section 111 rules include numerous requirements to install controls to reduce emissions, monitor for leaks, and report any deviations and testing results. Given the breadth of that rule’s requirements and the complexity of the oil and natural gas systems, many expect operators will have some deviations—ranging from minor reporting violations to significant equipment malfunctions that result in large emission events. The IRA, however, does not direct EPA to distinguish among those types of violations when considering whether an entity is “in compliance” and eligible for the

⁴⁵ 42 U.S.C. § 7436(f)(4).

⁴⁶ 89 Fed. Reg. 5328.

⁴⁷ *Id.*

⁴⁸ *Id.* at 5329.

⁴⁹ *Id.* at 5329-5330.



regulatory exemption of the WEC. Thus, operators may conclude they are unlikely to qualify for the regulatory exemption given the potential for deviations under the section 111 rules.

Additionally, a company's WEC calculation is based on its emissions reported to subpart W. EPA recently proposed that entities must add any large emission events an entity detects through its monitoring program required by the section 111 rule or identified by third parties. The subpart W proposal approach is intended to ensure reported emissions accurately reflect emission events identified during the year.

Given the impending WEC, companies will be evaluating how these larger emissions and any deviations—even if only reporting violations—could affect any payments under the WEC.

To reduce methane emissions, one of the regulatory tools is requiring companies to quickly find and fix emission leaks and to design systems to mitigate the potential for leaks. In the early years of the implementation of EPA's three methane rules, if entities start to deploy advanced technologies that look for leaks more frequently than required or are able to monitor a site more comprehensively and therefore identify more leaks, there is a risk of paying a higher WEC even though better detection can lead to greater emission reductions over time. This near-term concern could be overcome with the long-term opportunity of avoiding the WEC charge entirely by remaining below the IRA's waste emission threshold. However, for companies that are above the emissions threshold, it will be important to consider what flexibility EPA has based on the IRA text and whether EPA has opportunity to create incentives—either in final subpart W rule or in EPA's implementation of the section 111 NSPS/EGs—to reduce emissions recognizing the potential implications of WEC.

Ultimately, the ability of the sector to maximize methane emissions reductions will depend on the aggregate impact of the requirements and incentives included in EPA's multiple regulations, including:

- How EPA finalizes the WEC rule based on stakeholder feedback,
- How EPA finalizes subpart W reporting requirements, and
- How EPA implements the NSPS 0000b/EG 0000c rules under section 111.

We will be tracking each of these steps. [Keep updated here](#) and sign up for our monthly [Regulatory Tracker emails](#).



Appendix — Terms Defined by the Proposed Waste Emission Charge Rule and the IRA

Facility Applicable Emissions: Annual methane emissions associated with a WEC applicable facility that are either equal to, below, or exceeding the waste emissions threshold (as defined in the IRA) for the WEC applicable facility prior to consideration of any applicable exemptions.

Net WEC Emissions: The sum of WEC applicable emissions from all facilities under common ownership or control of a WEC obligated party.

Waste Emissions Threshold: The metric tons of methane emissions calculated by multiplying WEC applicable facility throughput by the industry segment-specific methane intensity thresholds established in CAA 136(f) and the density of methane (0.0192 metric ton per thousand standard cubic feet).

WEC Applicable Emissions: Annual methane emissions associated with a WEC applicable facility that are either equal to, below, or exceeding the waste emissions threshold for the WEC applicable facility after consideration of any applicable exemptions.

WEC Applicable Facility: A facility that is 1) within one or more of the industry segments included in the IRA and 2) for which the owner or operator reports GHG emissions under subpart W of more than 25,000 metric tons CO₂e.