6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 2 and 99**

**[EPA-HQ-OAR-2023-0434; FRL-10246.1-01-OAR]**

**RIN 2060-AW02**

# Waste Emissions Charge for Petroleum and Natural Gas Systems

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing a regulation to implement the requirements of the Clean Air Act (CAA) as specified in the Methane Emissions Reduction Program of the Inflation Reduction Act. This program requires the EPA to impose and collect an annual charge on methane emissions that exceed specified waste emissions thresholds from an owner or operator of an applicable facility that reports more than 25,000 metric tons of carbon dioxide equivalent of greenhouse gases emitted per year pursuant to the petroleum and natural gas systems source category requirements of the Greenhouse Gas Reporting Rule. The proposal would implement calculation procedures, flexibilities, and exemptions related to the waste emissions charge and proposes to establish confidentiality determinations for data elements included in waste emissions charge filings.

**DATES:** *Comments*. Comments must be received on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

*Public hearing*. The EPA will conduct a virtual public hearing on **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. See **SUPPLEMENTARY INFORMATION** for information on registering for a public hearing.

**ADDRESSES:** *Comments*. You may submit comments, identified by Docket ID No. EPA-HQ-OAR-2023-0434, by any of the following methods:

*Federal eRulemaking Portal*. *https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.

*Mail*: U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

*Hand Delivery or Courier (by scheduled appointment only)*: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.-4:30 p.m., Monday-Friday (except Federal holidays).

*Instructions*: All submissions received must include the Docket ID No. for this proposed rulemaking. Comments received may be posted without change to *https://www.regulations.gov*, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

The virtual hearing will be held using an online meeting platform, and the EPA has provided information on its website (*https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program-merp*) regarding how to register and access the hearing. Refer to the **SUPPLEMENTARY INFORMATION** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** For questions about this proposed action, contact Mr. Shaun Ragnauth, Climate Change Division, Office of Atmospheric Programs (MC-6207A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 343-9142; e-mail address: *merp@epa.gov*.

*World wide web (WWW)*. In addition to being available in the docket, an electronic copy of this proposal will also be available through the WWW. Following the Administrator's signature, a copy of this proposed rule will be posted on the EPA's Inflation Reduction Act

Methane Emissions Reduction Program website at *https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program*.

**SUPPLEMENTARY INFORMATION:**

*Written comments*. Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2023-0434, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at *https://www.regulations.gov* any information you consider to be confidential business information (CBI), proprietary business information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). Commenters who would like the EPA to further consider in this rulemaking comments relevant to this rulemaking that they previously provided on any other rulemaking or request for information (*e.g.*, the Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems, Docket ID No. EPA-HQ-OAR-2023-0234, the Methane Emissions Reduction Program Request for Information, Docket ID No. EPA-HQ-OAR-2022-0875, and the Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, Docket ID No. EPA-HQ-OAR-2021-0317) must submit those comments to the EPA during this proposal's comment period. Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments.

*Participation in virtual public hearing*. The EPA will begin pre-registering speakers for the hearing no later than one business day after publication in the *Federal Register*. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program* or contact us by email at merp@epa.gov. The last day to pre-register to speak at the hearing will be **[INSERT DATE 12 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. On **[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, the EPA will post a general agenda that will list pre-registered speakers in approximate order at *https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program*.

The EPA will make reasonable efforts to follow the schedule as closely as practicable on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to *merp@epa.gov*. The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program*. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact us by email at *merp@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the *Federal Register* announcing updates.

If you require the services of an interpreter or special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by **[INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. The EPA may not be able to arrange accommodations without advanced notice.

*Regulated entities*. This is a proposed regulation. If finalized, the regulation would affect certain owners or operators of facilities in certain segments of the petroleum and natural gas systems industry that report more than 25,000 metric tons (mt) of carbon dioxide equivalent ($CO_2e$) pursuant to the requirements codified at 40 CFR part 98, subpart W (Petroleum and Natural Gas Systems) (hereafter referred to as "part 98, subpart W"). Per the requirements of CAA section 136(d), the industry segments to which the waste emissions charge may apply are offshore petroleum and natural gas production, onshore petroleum and natural gas production, onshore natural gas processing, onshore gas transmission compression, underground natural gas storage, liquefied natural gas storage, liquefied natural gas import and export equipment, onshore petroleum and natural gas gathering and boosting, and onshore natural gas transmission pipeline. Regulated categories and entities include, but are not limited to, those listed in Table 1 of this preamble:

**Table 1. Examples of Affected Entities by Category**

| Category | North American Industry Classification System (NAICS) | Examples of affected facilities |
|---|---|---|
| Petroleum and Natural Gas Systems | 486210 | Pipeline transportation of natural gas. |
| | 221210 | Natural gas distribution facilities. |
| | 211120 | Crude petroleum extraction. |
| | 211130 | Natural gas extraction. |

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this proposed action. This table lists the types of facilities that the EPA is now aware could potentially be affected by this action. Other types of

facilities than those listed in the table could also be subject to reporting requirements. To determine whether you would be affected by this proposed action, you should carefully examine the applicability criteria found in 40 CFR part 99, subpart A (General Provisions). If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*Acronyms and abbreviations*. The following acronyms and abbreviations are used in this document.

| | |
|---|---|
| AMLD | Advanced Mobile Leak Detection |
| API | American Petroleum Institute |
| ASTM | American Society for Testing and Materials |
| BOEM | Bureau of Ocean Energy Management |
| CAA | Clean Air Act |
| CBI | confidential business information |
| CEMS | continuous emission monitoring system |
| CFR | Code of Federal Regulations |
| $CH_4$ | methane |
| $CO_2$ | carbon dioxide |
| $CO_2e$ | carbon dioxide equivalent |
| e-GGRT | electronic Greenhouse Gas Reporting Tool |
| EF | emission factor |
| EG | emission guidelines |
| EIA | Energy Information Administration |
| EPA | U.S. Environmental Protection Agency |
| ET | Eastern time |
| FAQ | frequently asked question |
| FR | *Federal Register* |
| GHG | greenhouse gas |
| GHGRP | Greenhouse Gas Reporting Program |
| GOR | gas-to-oil ratio |
| GRI | Gas Research Institute |
| GWP | Global Warming Potential |
| IRA | Inflation Reduction Act of 2022 |
| ICR | Information Collection Request |
| ISBN | International Standard Book Number |
| ISO | International Standards Organization |

| | |
|---|---|
| LDC | local distribution company |
| LNG | liquified natural gas |
| mmBtu | million British thermal units |
| MMscf | million standard cubic feet |
| mt | metric tons |
| $N_2O$ | nitrous oxide |
| NAICS | North American Industry Classification System |
| NGLs | natural gas liquids |
| NIST | National Institute of Standards and Technology |
| NSPS | new source performance standards |
| OEM | original equipment manufacturer |
| OGI | optical gas imaging |
| OMB | Office of Management and Budget |
| PBI | proprietary business information |
| ppm | parts per million |
| PRA | Paperwork Reduction Act |
| RFA | Regulatory Flexibility Act |
| RY | reporting year |
| scfh | standard cubic feet per hour |
| TSD | technical support document |
| U.S. | United States |
| UMRA | Unfunded Mandates Reform Act of 1995 |
| UNFCCC | United Nations Framework Convention on Climate Change |
| VOC | volatile organic compound |
| WEC | waste emissions charge |
| WWW | World Wide Web |

**Table of Contents**

## I. Background

### *A. How is this Preamble Organized?*

The first section (section I.) of this preamble contains background information regarding the proposed rule. This section also discusses the EPA's legal authority under the Clean Air Act (CAA) to promulgate implementing regulations for the waste emissions charge, proposed to be codified at 40 CFR part 99 (hereafter referred to as "part 99"). Section I. of the preamble also discusses the EPA's legal authority to make confidentiality determinations for new data elements included in waste emissions charge filings (WEC filings) required by the proposed rule. Section II. of this preamble contains detailed information on the proposed provisions necessary to

implement CAA section 136(c) through (g), including exemptions. Section III. of this preamble describes the general requirements for the proposed rule. Section IV. of this preamble discusses the proposed confidentiality determinations for new data reporting elements for the proposed part 99 and also discusses confidentiality determinations for two data elements reported under part 98, subpart W. Section V. of this preamble discusses the impacts of the proposed part 99. Section VI. of this preamble describes the statutory and Executive order requirements applicable to this proposed action.

*B. Executive Summary*

In August 2022, Congress passed, and President Biden signed, the Inflation Reduction Act of 2022 (IRA) into law. Section 60113 of the IRA amended the CAA by adding section 136, "Methane Emissions and Waste Reduction Incentive Program for Petroleum and Natural Gas Systems." CAA section 136(c) directs the Administrator of the EPA to impose and collect a "Waste Emissions Charge" on methane emissions that exceed statutorily specified waste emissions thresholds from owners or operators of applicable facilities. The waste emissions threshold is a facility-specific amount of metric tons of methane emissions calculated using the segment-specific methane intensity thresholds defined in CAA section 136(f)(1) through (3) and a facility's natural gas throughput (or oil throughput in certain circumstances). Facilities that have methane emissions below the threshold would not be required to pay the charge; facilities that have emissions above the threshold would be required to pay the charge. The waste emissions charge, or WEC, is specified in CAA section 136 to begin for emissions occurring in 2024 at $900 per metric ton of methane exceeding the threshold, increasing to $1,200 per metric ton of methane in 2025, and to $1,500 per metric ton of methane in 2026 and years after. The WEC only applies to the subset of a facility's emissions that are above the waste emissions threshold.

The WEC program applies to facilities that report more than 25,000 mt $CO_2e$ of greenhouse gases emitted per year pursuant to the Greenhouse Gas Reporting Rule's

requirements for the petroleum and natural gas systems source category (codified as 40 CFR part 98, subpart W).[1] An applicable facility, as defined in CAA section 136(d), is a facility within the following industry segments (as the following industry segments are defined in part 98, subpart W): onshore petroleum and natural gas production, offshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting, onshore natural gas processing, onshore gas transmission compression, onshore natural gas transmission pipeline, underground natural gas storage, liquefied natural gas import and export equipment, and liquefied natural gas storage.[2] Congress structured the WEC so that it focuses on high-emitting oil and gas facilities (*i.e.*, those with emissions greater than 25,000 mt $CO_2$e of greenhouse gases emitted per year and that have a methane emissions intensity in excess of the statutory threshold).

CAA section 136 defines three important elements of the WEC program: 1) waste emissions thresholds; 2) netting of emissions across different facilities; and 3) exemptions for certain emissions and facilities. Facilities may owe a WEC obligation if their subpart W reported emissions exceed facility-specific waste emissions thresholds specified in CAA section 136(f).[3] Facility efficiency in terms of methane emissions per unit of production or throughput would have a large impact on the amount of the WEC owed, with more efficient facilities expected to have emissions falling below the specified thresholds.

Some facilities may have emissions that are below the waste emissions thresholds, and some facilities may have emissions above the thresholds. CAA section 136(f)(4) allows facilities

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[1] 42 U.S.C. 7436(c) ("The Administrator shall impose and collect a charge on methane emissions that exceed an applicable waste emissions threshold under subsection (f) from an owner or operator of an applicable facility that reports more than 25,000 metric tons of carbon dioxide equivalent of greenhouse gases emitted per year pursuant to subpart W of part 98 of title 40, Code of Federal Regulations, regardless of the reporting threshold under that subpart.").
[2] 42 U.S.C. 7436(d).
[3] 42 U.S.C. 7436(f)(1-3).

under common ownership or control to net emissions across those facilities, which could result in a reduced total charge, or avoidance of the charge.[4]

In addition, there are three exemptions that may lower a facility's WEC or exempt the facility entirely from the charge. The first exemption, found in CAA section 136(f)(5), exempts from the charge emissions occurring at facilities in the onshore or offshore petroleum and natural gas production industry segments that are caused by eligible delays in environmental permitting of gathering or transmission infrastructure.[5] The second exemption, found in CAA section 136(f)(6), exempts from the charge, if certain conditions are met, those facilities that are subject to and in compliance with final methane emissions requirements promulgated pursuant to CAA sections 111(b) and (d).[6] This exemption becomes available only if a determination is made by the Administrator that such final requirements are approved and in effect in all states with respect to the applicable facilities, and that the emissions reductions resulting from those final requirements will achieve equivalent or greater emission reductions as would have resulted from the EPA's proposed methane emissions requirements from 2021.[7] The third exemption, found in CAA section 136(f)(7), exempts from the charge reporting-year emissions from wells that are

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[4] 42 U.S.C. 7436(f)(4) ("In calculating the total emissions charge obligation for facilities under common ownership or control, the Administrator shall allow for the netting of emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments identified in subsection (d).").

[5] 42 U.S.C. 7436(f)(5). ("Charges shall not be imposed pursuant to paragraph (1) on emissions that exceed the waste emissions threshold specified in such paragraph if such emissions are caused by unreasonable delay, as determined by the Administrator, in environmental permitting of gathering or transmission infrastructure necessary for offtake of increased volume as a result of methane emissions mitigation implementation.")

[6] 42 U.S.C. 7436(f)(6) ("Charges shall not be imposed pursuant to subsection (c) on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 7411 of this title upon a determination by the Administrator that—(i) methane emissions standards and plans pursuant to subsections (b) and (d) of section 7411 of this title have been approved and are in effect in all States with respect to the applicable facilities; and (ii)compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by the proposed rule of the Administrator entitled "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review" (86 FR 63110 (November 15, 2021)), if such rule had been finalized and implemented.").

[7] *Id.*

permanently shut in and plugged.[8] In this action, the EPA proposes specific requirements for eligibility for each of these exemptions.

The EPA proposes to require that the WEC would be quantified and paid through a WEC filing submitted no later than March 31 of each calendar year for methane emissions that occurred in the previous calendar year (subpart W reporting year). The WEC filing would include information relevant to calculating the WEC, such as identification of facilities included in netting, eligibility for exemptions from WEC, and supporting information necessary for the EPA to verify information submitted regarding exemptions.

The proposed provisions of part 99 under this rulemaking are described in further detail in sections II. and III. of this preamble.

*C. Background and Related Actions*

Congress designed the WEC to work in tandem with several related EPA programs. The WEC provides an incentive for the early adoption of methane emission reduction practices and technologies such as those that required under the Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (NSPS OOOOb/EG OOOOc), which Congress expected to be promulgated pursuant to CAA section 111. The sooner facilities adopt the methodologies and technologies required in those rules, the lower their assessed WEC; at full implementation of those rules, the EPA expects many of the WEC-affected facilities will be below the WEC emissions thresholds. To further support the overall goal of reducing methane emissions, CAA section 136(a) and (b) also provides $1.55 billion to, among other things, help finance the early adoption of emissions reduction methodologies and technologies and to support monitoring of methane emissions. More detailed background information on the impacts of methane on public

[8] 42 U.S.C. 7436(f)(7).(" Charges shall not be imposed with respect to the emissions rate 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.")

health and welfare and the related regulatory activities is provided in section I.C.1. of this preamble.

1. How does methane affect public health and welfare?

Elevated concentrations of greenhouse gases (GHGs) including methane have been warming the planet, leading to changes in the Earth's climate that are occurring at a pace and in a way that threatens human health, society, and the natural environment. While the EPA is not statutorily required to make any particular scientific or factual findings regarding the impact of GHG emissions on public health and welfare in support of the proposed WEC, the EPA is providing in this section a brief scientific background on methane and climate change to offer additional context for this rulemaking and to help the public understand the environmental impacts of GHGs such as methane.

As a GHG, methane in the atmosphere absorbs terrestrial infrared radiation, which in turn contributes to increased global warming and continuing climate change, including increases in air and ocean temperatures, changes in precipitation patterns, retreating snow and ice, increasingly severe weather events, such as hurricanes of greater intensity, and sea level rise, among other impacts. Methane also contributes to climate change through chemical reactions in the atmosphere that produce tropospheric ozone and stratospheric water vapor. In 2022, atmospheric concentrations of methane increased by nearly 17 parts per billion (ppb) over 2021 levels to reach 1912 ppb.[9] This was the largest increase since the start of the NOAA atmospheric record in 1984, with current concentrations now more than two and a half times larger than the preindustrial level.[10] Methane is responsible for about one third of all warming resulting from human emissions of well-mixed GHGs,[11] and due to its high radiative efficiency compared to

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[9] NOAA, *https://gml.noaa.gov/webdata/ccgg/trends/ch4/ch4_annmean_gl.txt*.

[10] Blunden, J. and T. Boyer, Eds., 2022: "State of the Climate in 2021." *Bull. Amer. Meteor. Soc.*, 103 (8), Si–S465, *https://doi.org/10.1175/2022BAMSStateoftheClimate.1*, 103 (8), Si–S465, *https://doi.org/10.1175/2022BAMSStateoftheClimate.1*

[11] IPCC, 2021: *Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental*

carbon dioxide, methane mitigation is one of the best opportunities for reducing near-term warming.

Major scientific assessments continue to be released that further advance our understanding of the climate system and the impacts that methane and other GHGs have on public health and welfare both for current and future generations. According to the Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Report, "it is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred."[12] Recent EPA modeling efforts[13] have also shown that impacts from these changes are projected to vary regionally within the U.S. For example, large damages are projected from sea level rise in the Southeast, wildfire smoke in the Western U.S., and impacts to agricultural crops and rail and road infrastructure in the Northern Plains. Scientific assessments, EPA analyses, and updated observations and projections document the rapid rate of current and future climate change and the potential range impacts both globally and in the United States,[14] presenting clear support

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*Panel on Climate Change* [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 3−32, doi:10.1017/9781009157896.001

[12] *Id.*

[13] (1) EPA. 2021. *Technical Documentation on the Framework for Evaluating Damages and Impacts (FrEDI)*. U.S. Environmental Protection Agency, EPA 430-R-21-004.
(2) Hartin C., E.E. McDuffie, K. Novia, M. Sarofim, B. Parthum, J. Martinich, S. Barr, J. Neumann, J. Willwerth, & A. Fawcett. Advancing the estimation of future climate impacts within the United States. EGUsphere doi: 10.5194/egusphere-2023-114, 2023.

[14] (1) USGCRP, 2018: *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018. Available at *https://nca2018.globalchange.gov*.
(2) IPCC, 2021: *Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Pe´an, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekc¸i, R. Yu and B. Zhou (eds.)]. Cambridge University Press.

regarding the current and future dangers of climate change and the importance of GHG emissions mitigation.

2. Related Actions

As mandated by CAA section 136(c) and (d), the applicability of the WEC is based upon the quantity of metric tons of $CO_2e$ emitted per year pursuant to the requirements of subpart W. Further, CAA section 136(e) requires that the WEC amount be calculated based upon methane emissions reported pursuant to subpart W. As a result, this proposed action builds upon previous subpart W rulemakings.

On August 1, 2023, the EPA proposed revisions to subpart W consistent with the authority and directives set forth in CAA section 136(h) as well as the EPA's authority under CAA section 114 (88 FR 50282) (hereafter referred to as the "2023 Subpart W Proposal"). In that rulemaking, the EPA proposed revisions to require reporting of additional emissions or emissions sources to address potential gaps in the total methane emissions reported by facilities to subpart W. For example, these proposed revisions would add a new emissions source, referred to as "other large release events," to capture large emission events that are not accurately accounted for using existing methods in subpart W. The EPA also proposed revisions to add or revise existing calculation methodologies to improve the accuracy of reported emissions, incorporate additional empirical data, and allow owners and operators of applicable facilities to submit empirical emissions data that could appropriately demonstrate the extent to which a charge is owed in implementation of CAA section 136, as directed by CAA section 136(h). The EPA also proposed revisions to existing reporting requirements to collect data that would improve verification of reported data, ensure accurate reporting of emissions, and improve the transparency of reported data. For clarity of discussion within this preamble, unless otherwise stated, references to provisions of subpart W (*i.e.,* 40 CFR 98.230 through 98.238) reflect the language as proposed in the 2023 Subpart W Proposal. The EPA's intention in this proposed

rulemaking is that the final WEC rule would update the proposed cross-references to subpart W to be consistent with the final Subpart W rule resulting from the 2023 Subpart W Proposal.

Under the Greenhouse Gas Reporting Program, the EPA also recently issued a supplemental proposal to a 2022 proposed rule (88 FR 32852, May 22, 2023), which included proposed updates to the General Provisions of the Greenhouse Gas Reporting Rule to reflect revised global warming potentials (GWPs), proposed reporting of GHG data from additional sectors (*i.e.*, non-subpart W sectors), and proposed revisions to source categories other than subpart W that would improve implementation of the Greenhouse Gas Reporting Rule. The proposed revision to the GWP of methane (from 25 to 28) is expected to lead to a small increase in the number of facilities that exceed the subpart W 25,000 mt $CO_2e$ threshold and thus become subject to the proposed part 99 requirements. This supplemental proposed rule is not expected to otherwise impact subpart W reporting requirements as they pertain to the applicability or implementation of the proposed part 99 requirements.

In addition, on November 15, 2021 (86 FR 63110), the EPA proposed under CAA section 111(b) standards of performance regulating emissions of methane and volatile organic compounds (VOCs) for certain new, reconstructed, and modified sources in the oil and natural gas source category (proposed as 40 CFR part 60, subpart OOOOb) (hereafter referred to as "NSPS OOOOb"), as well as emissions guidelines regulating emissions of methane under CAA section 111(d) for certain existing oil and natural gas sources (proposed as 40 CFR part 60, subpart OOOOc) (hereafter referred to as "EG OOOOc"). The November 15, 2021 proposal (covering both NSPS OOOOb and EG OOOOc) – and which Congress explicitly referred to in section 136 – will be referred to hereafter as the "NSPS OOOOb/EG OOOOc 2021 Proposal." The NSPS OOOOb/EG OOOOc 2021 Proposal sought to strengthen standards of performance previously in effect under section 111(b) of the CAA for new, modified and reconstructed oil and natural gas sources, and to establish emissions guidelines under section 111(d) of the CAA for

states to follow in developing plans to limit methane emissions from existing oil and natural gas sources.

On December 6, 2022, the EPA issued a supplemental proposal to update, strengthen and expand upon the NSPS OOOOb/EG OOOOc 2021 Proposal (87 FR 74702). The December 6, 2022 supplemental proposal will be referred to hereafter as "NSPS OOOOb/EG OOOOc 2022 Supplemental Proposal." This supplemental proposal modified certain standards proposed in the NSPS OOOOb/EG OOOOc 2021 Proposal and added proposed requirements for sources not previously covered. Among other things, the supplemental proposal sought to: ensure that all well sites are routinely monitored for leaks, with requirements based on the type and amount of equipment on site; encourage the deployment of innovative and advanced monitoring technologies by establishing performance requirements that can be met by a broader array of technologies; prevent leaks from abandoned and unplugged wells by requiring documentation that well sites are properly shut-in and plugged before monitoring is allowed to end; leverage qualified expert monitoring to identify "super-emitters" for prompt mitigation; and strengthen requirements for flares.

On December 2, 2023, in an action titled, *"*Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review," the EPA finalized these two rules to reduce air emissions from the Crude Oil and Natural Gas source category under section 111 of the Clean Air Act. First, the EPA finalized NSPS OOOOb regulating GHG (in the form of a limitation on emissions of methane) and VOCs emissions for the Crude Oil and Natural Gas source category pursuant to CAA section 111(b)(1)(B) (hereafter, "NSPS OOOOb"). Second, the EPA finalized presumptive standards in EG OOOOc to limit GHG emissions (in the form of methane limitations) from designated facilities in the Crude Oil and Natural Gas source category, as well as requirements

under the CAA section 111(d) for states to follow in developing, submitting, and implementing state plans to establish performance standards (hereafter, "EG OOOOc").[15]

The NSPS OOOOb/EG OOOOc 2021 Proposal and Final NSPS OOOOb/EG OOOOc are relevant to this WEC proposal in two ways: first, WEC applicable facilities containing CAA section 111(b) and (d) facilities that are in compliance with the applicable standards are likely to have emissions below the thresholds specified in section II.B. of this preamble due to mitigation resulting from meeting the methane emissions requirements of NSPS OOOOb or EG OOOOc-implementing state and Federal plans, and therefore would not be expected to incur charges under the WEC program; and second, compliance with applicable standards (if certain criteria are met) may exempt facilities from the WEC under the regulatory compliance exemption outlined at CAA section 136(f)(6) (discussed in section II.D.2. of this preamble). As a part of the NSPS OOOOb/EG OOOOc 2022 Supplemental Proposal, the EPA requested comment on the criteria and approaches that the Administrator should consider in making the CAA section 136(f)(6)(A)(ii) equivalency determination, which is discussed at section II.D.2. of this preamble.

The EPA also opened a non-regulatory docket on November 4, 2022 and issued a Request for Information (RFI) seeking public input to inform program design related to CAA section 136.[16] As part of this request, the EPA sought input on issues that should be considered related to implementation of the WEC. The comment period closed on January 18, 2023.

The 2023 Subpart W Proposal, the NSPS OOOOb/EG OOOOc 2021 Proposal, the NSPS OOOOb/EG OOOOc 2022 Supplemental Proposal, and the November 2022 request for information are relevant to this proposal. While the EPA has reviewed or will review relevant comments submitted as part of the rulemaking actions and request for information, the EPA is

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[15] In this action, the EPA also finalized several related actions stemming from the joint resolution of Congress, adopted on June 30, 2021, under the CRA, disapproving the 2020 Policy Rule, and also finalized a protocol under the general provisions for use of Optical Gas Imaging.
[16] Docket ID No. EPA-HQ-OAR-2022-0875.

not obligated to respond to those comments in this action since the comment solicitations did not accompany a proposal regarding the WEC. Commenters who would like the EPA to formally consider in this rulemaking any relevant comments previously submitted must resubmit those comments to the EPA during this proposal's comment period.

In addition to the WEC requirement, and the related revisions to subpart W to facilitate accuracy of reporting and charge calculation, as noted in section I.C. of this preamble, CAA sections 136(a) and (b) provide $1.55 billion for the Methane Emissions Reduction Program, including for incentives for methane mitigation and monitoring. The EPA is partnering with the U.S. Department of Energy and National Energy Technology Laboratory to provide financial assistance for monitoring and reducing methane emissions from the oil and gas sector, as well as technical assistance to help implement solutions for monitoring and reducing methane emissions. As designed by Congress, these incentives were intended to complement the regulatory programs and to help facilitate the transition to a more efficient petroleum and natural gas industry.

*D. Legal Authority*

The EPA is proposing this rule under its newly established authority provided in CAA section 136. As noted in section I.B. of this preamble, the IRA added CAA section 136, "Methane Emissions and Waste Reduction Incentive Program for Petroleum and Natural Gas Systems," which requires that the EPA impose and collect an annual specified charge on methane emissions that exceed an applicable waste emissions threshold from an owner or operator of an applicable facility that reports more than 25,000 mt $CO_2e$ of greenhouse gases emitted per year pursuant to subpart W of the GHGRP. Under CAA section 136, an "applicable facility" is a facility within nine of the ten industry segments subject to subpart W, as currently defined in 40 CFR 98.230 (excluding natural gas distribution).

The EPA is also proposing elements of this rule under its existing CAA authority provided in CAA section 114, as well as CAA section 301. CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, or persons whom the

Administrator believes may have necessary information to monitor and report emissions and provide other information the Administrator requests for the purposes of carrying out any provision of the CAA (except for a provision of title II with respect to manufacturers of new motor vehicles or new motor vehicle engines). Thus, CAA section 114(a)(1) additionally provides the EPA broad authority to require the information that would be required by this proposed rule because the information is relevant for carrying out CAA section 136. Additionally, CAA section 301(a)(1) provides that the EPA is authorized to prescribe such regulations "as are necessary to carry out [its] functions under [the CAA]."

The Administrator has determined that this action is subject to the provisions of section 307(d) of the CAA. Section 307(d) contains a set of procedures relating to the issuance and review of certain CAA rules.

In addition, pursuant to sections 114, 301, and 307 of the CAA, the EPA is publishing proposed confidentiality determinations for the new data elements required by this proposed regulation.

## II. Requirements to Implement the Waste Emissions Charge

This section summarizes the EPA's proposed approach to calculating WEC, including how WEC would be calculated at the facility level, how netting of emissions from facilities under common ownership or control would be applied, the EPA's interpretation of common ownership or control, and how the exemptions established in CAA section 136(f) would be implemented.

### *A. Proposed Definitions to Support WEC Implementation*

In accordance with CAA section 136(d), applicable facilities under part 99 are those facilities within certain industry segments as defined under part 98, subpart W. Thus, we are proposing several definitions within the general provisions of 40 CFR 99.2. First, as the statute specifies, we are proposing a definition of "applicable facility" to mean a facility within one or more of the following industry segments: onshore petroleum and natural gas production, offshore

petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting, onshore natural gas processing, onshore natural gas transmission compression, onshore natural gas transmission pipeline, underground natural gas storage, LNG import and export equipment, or LNG storage, as those industry segments are defined in 40 CFR 98.230 of subpart W.[17] A single reporting facility under part 98, subpart W, typically consists of operations within a single industry segment. However, for certain industry segments a single reporting facility may represent operations in two or more industry segments. Industry segments that potentially may exist within the same reporting facility are onshore natural gas processing, onshore natural gas transmission compression, underground natural gas storage, LNG import and export equipment, and LNG storage. To accommodate for such facilities, we are proposing within the definition of "applicable facility" that such operations would be considered a single applicable facility under part 99.

We are also proposing a definition of "WEC applicable facility" in 40 CFR 99.2, which would mean an applicable facility for which the owner or operator of the subpart W reporting facility reported GHG emissions under subpart W of more than 25,000 mt $CO_2e$ – the amount set in the statute. In cases where a subpart W facility reports under two or more of the industry segments listed in the previous paragraph, the EPA proposes that the 25,000 mt $CO_2e$ threshold would be evaluated based on the total facility GHG emissions reported to subpart W across all of the industry segments (*i.e.*, the facility's total subpart W GHGs). As discussed in section II.B.1. of this preamble, the waste emissions threshold is the facility-specific threshold, based upon an industry segment-specific methane intensity threshold, above which the EPA must impose and collect the WEC. For the purposes of determining the waste emissions threshold for a WEC applicable facility that operates within multiple industry segments, the EPA proposes that each industry segment would be assessed separately (*i.e.*, using industry segment-specific throughput and methane intensity threshold) and then summed together to determine the waste emissions

[17] *See* 42 U.S.C. 7436(d).

threshold for the facility. The EPA proposes that this approach would be used in all cases where a WEC applicable facility contains equipment in multiple subpart W industry segments.

The EPA requests comment on an alternative definition of WEC applicable facility as it applies to subpart W facilities that report under two or more industry segments. This alternative approach would assess these facilities against the 25,000 mt $CO_2e$ applicability threshold using the $CO_2e$ reported under subpart W for each individual segment at the facility rather than the total facility subpart W $CO_2e$ reported across all segments. CAA section 136(d) defines an applicable facility as one "within" the nine industry segments subject to the WEC and does not specify that an applicable facility is in one and only one industry segment. The EPA understands this to mean that an applicable facility constitutes an entire subpart W facility, including those that report under more than one segment. Thus, based on the statutory text, the EPA proposes to assess WEC applicability based on the entire subpart W facility's emissions. Based on historic subpart W data, no more than two dozen facilities report data for multiple segments, and when total subpart W $CO_2e$ is summed across all segments at these facilities, almost all of these facilities remain below the 25,000 mt $CO_2e$ threshold. Historic data also show that the industry segments (onshore natural gas processing, onshore natural gas transmission compression, and underground natural gas storage) located at these facilities generally have methane emissions below the waste emissions thresholds. The proposed approach of using total subpart W facility $CO_2e$ for determining WEC applicability therefore would not result in a significant number of facilities being regulated under WEC compared to an approach that assessed applicability using subpart W $CO_2e$ for each individual industry segment at a facility. Based on historic data, the EPA does not expect the very small number of facilities with operations in multiple subpart W segments that could be subject to the WEC under the proposed approach to experience a substantially different financial impact under the alternative approach.

We are also proposing a definition for "WEC applicable emissions" in 40 CFR 99.2, which would mean the annual methane emissions, as calculated using equations specified in part

99, from a WEC applicable facility that are either equal to, below, or exceeding the waste emissions threshold for the facility after consideration of any applicable exemptions. The proposed calculation methodology for WEC applicable emissions is addressed in section II.B.2. of this preamble. We are also proposing a definition for "facility applicable emissions" in 40 CFR 99.2 which would mean the annual methane emissions, as calculated using equations specified in part 99, from a WEC applicable facility that are either equal to, below, or exceeding the waste emissions threshold for the facility prior to consideration of any applicable exemptions.

The proposed provisions of this part would apply to WEC obligated parties and WEC applicable facilities. In addition to the proposed definition for WEC applicable facility discussed earlier in this section, we are proposing a definition for the term WEC obligated party in 40 CFR 99.2. The term WEC obligated party refers to the owners or operators of one or more WEC applicable facilities. For WEC applicable facilities that have more than one owner or operator, we are proposing that the WEC obligated party is an owner or operator selected by a binding agreement among the owners and operators of the WEC applicable facility. The EPA anticipates that such an agreement would be similar to those used in carrying out 40 CFR 98.4(b) under the GHGRP.

For the purposes of submitting the WEC filing, we are proposing that the WEC obligated party's WEC applicable facilities are the WEC applicable facilities for which it is the owner or operator (including through binding agreement as noted above), as of December 31 of each reporting year. Under the proposed approach, the WEC obligated party would be responsible for any WEC obligation from facilities for which it was the facility owner or operator as of December 31 of the reporting year. The EPA recognizes that facilities may be acquired or divested at any time in the year, and that under the proposed approach the year-end owner or operator would be responsible for data and any corresponding WEC obligation for the entire reporting year. The EPA believes that this approach is both reasonable and necessary for implementation of the WEC program. First, subpart W data reporting uses the same approach;

the facility owner or operator as of December 31 is responsible for emissions for the entire year. Because the subpart W data is inextricably linked to the WEC filing, it would be inappropriate to have different facility owners or operators under each regulation. Specifically, different owners or operators for the same facility under subpart W and the WEC program could lead to challenges for WEC filings and associated data verification, and increase industry burden by requiring significant coordination between different companies. Second, subpart W data are reported on an annual basis, and there is no means by which methane emissions could be accurately allocated across multiple owners or operators in a single year. For example, emissions could not be pro-rated based on time of ownership over the reporting year because emissions do not occur uniformly over time, and emissions from certain sources cannot be linked to specific times. Similarly, there is not a direct relationship between methane emissions and oil and natural gas production, so temporal data on hydrocarbon production could not be used to accurately allocate emissions. The EPA therefore believes it would be neither practical nor accurate for the reporting responsibility and potential WEC obligation for a single facility to be split among multiple WEC obligated parties.

The EPA also recognizes that a facility's owner or operator, and thus its WEC obligated party, may change between December 31 and March 31. In such situations, under the proposed approach the WEC obligated party associated with a facility as of December 31 would remain responsible for accounting for that facility in its WEC filing and be responsible for any WEC obligation associated with that facility.

The EPA invites comments on these proposed definitions and whether additional definitions would help with the implementation of the WEC. The EPA requests comment on the proposed definition of WEC obligated party being responsible for all facilities for which it was the facility owner or operator as of December 31, regardless of when in the reporting year it became a facility's owner or operator. The EPA requests comment on alternative definitions of WEC obligated party, including those that would allocate facility subpart W data to multiple

WEC obligated parties and a definition that would place the WEC obligation and reporting requirements on the WEC obligated party that was a facility's owner or operator at the time of the WEC filing (i.e., as of March 31 of the year following the reporting year rather than December 31 of the reporting year). For alternative definitions that would allocate subpart W data, the EPA requests comment on potential methodologies that would accurately split the annual subpart W data across multiple WEC obligated parties.

*B. Waste Emissions Thresholds*

The CAA establishes a waste emissions threshold that is defined in terms of industry segment-specific methane intensity thresholds applicable to certain facilities that report GHG emissions under subpart W of the GHGRP. The industry segment-specific methane intensity thresholds specified in CAA 136(f) and listed in Table 2 of this preamble are based on a rate of methane emissions per amount of natural gas or oil sent to sale from or through a facility. The industry segment-specific methane intensity thresholds are generally defined in terms of a percentage of throughput (*e.g.*, 0.002 percent of natural gas sent to sale). However, since the WEC is based on metric tons of methane (*e.g.*, $900/metric ton) that exceed the threshold, for the purposes of calculating the number of metric tons that are subject to the WEC, we are proposing to calculate the facility waste emissions thresholds in metric tons of methane.

For the onshore and offshore petroleum and natural gas production industry segments, CAA section 136(f) differentiates based on whether the facility is sending natural gas to sale or only sending oil to sale, and if the facility does not send natural gas to sale, the threshold is based on methane emissions per amount of oil sent to sale. For facilities that are not in the onshore or offshore production industry segments, the industry segment-specific methane intensity thresholds are based on the amount of natural gas sent to sale from or through the facility. The industry segment-specific methane intensity thresholds are applied to the natural gas or petroleum throughput attributable to that industry segment to calculate facility-specific waste emissions thresholds. See Table 2 for an overview of how the waste emissions thresholds are

calculated. Facility waste emissions thresholds are compared to reported methane emissions; facilities with methane emissions that exceed the waste emissions threshold may be subject to the WEC. For WEC applicable facilities under common ownership or control of a single WEC obligated party, the WEC applicable emissions for each facility are summed to calculate the net emissions for that WEC obligated party.

Subpart W requires reporting of natural gas throughput by thousand standard cubic feet, oil by barrels, and methane by metric ton. As a practical matter, since the WEC is based on a dollar per metric ton of methane, the waste emissions thresholds must generally be converted into metric tons of methane for comparison against reported methane, generally by multiplying the thresholds by the density of methane.

**Table 2. Industry Segment Throughput Metrics and Methane Intensities**

<table>
<tr><th>Industry Segment</th><th>Throughput Metric [a]</th><th>Industry Segment-Specific Methane Intensity</th></tr>
<tr><td>Onshore petroleum and natural gas production</td><td rowspan="2">The quantity of natural gas produced from producing wells that is sent to sale in the calendar year, in thousand standard cubic feet; or the quantity of crude oil produced from producing wells that is sent to sale in the calendar year, in barrels, if facility sends no natural gas to sale</td><td rowspan="2">0.20 percent of natural gas sent to sale from facility; or 10 metric tons of methane per million barrels of oil sent to sale from facility, if facility sends no natural gas to sale</td></tr>
<tr><td>Offshore petroleum and natural gas production</td></tr>
<tr><td>Onshore petroleum and natural gas gathering and boosting</td><td>The quantity of natural gas transported through the facility to a downstream endpoint such as a natural gas processing facility, a natural gas transmission pipeline, a natural gas distribution pipeline, a storage facility, or another gathering and boosting facility in the calendar year, in thousand standard cubic feet</td><td rowspan="2">0.05 percent of natural gas sent to sale from or through facility</td></tr>
<tr><td>Onshore natural gas processing</td><td>The quantity of residue gas leaving that has been processed by the facility and any gas that passes through the facility to sale without being processed by the facility in the calendar year, in thousand standard cubic feet</td></tr>
</table>

| | | |
|---|---|---|
| Onshore natural gas transmission compression | The quantity of natural gas transported through the compressor station in the calendar year, in thousand standard cubic feet | 0.11 percent of natural gas sent to sale from or through facility |
| Onshore natural gas transmission pipeline | The quantity of natural gas transported through the facility and transferred to third parties such as LDCs or other transmission pipelines in the calendar year, in thousand standard cubic feet | |
| Underground natural gas storage | The quantity of natural gas withdrawn from storage and sent to sale in the calendar year, in thousand standard cubic feet | |
| LNG import and export equipment | For LNG import equipment, the quantity of LNG imported that is sent to sale in the calendar year, in thousand standard cubic feet; for LNG export equipment, the quantity of LNG exported that is sent to sale in the calendar year, in thousand standard cubic feet | 0.05 percent of natural gas sent to sale from or through facility |
| LNG storage | The quantity of LNG withdrawn from storage and sent to sale in the calendar year, in thousand standard cubic feet | |

[a] Throughput metrics in this table are based on the proposed subpart W reporting elements in the 2023 Subpart W Proposal (88 FR 50282).

1. Facility Waste Emissions Thresholds

CAA section 136(f)(1) through (3) establishes facility-specific waste emissions thresholds above which the EPA must impose and collect the WEC. The CAA defines waste emissions threshold requirements, and establishes the method for calculation of the charge, for nine segments of the oil and gas industry.

CAA section 136(f)(1) requires the EPA to impose and collect the WEC on facilities in the onshore petroleum and natural gas production and offshore petroleum and natural gas production industry segments with methane emissions, in metric tons, that exceed either 0.20 percent of the natural gas sent to sale from the facility or, if no natural gas is sent to sale, 10 metric tons of methane per million barrels of oil sent to sale from the facility. To determine the waste emissions threshold from a WEC applicable facility in the onshore petroleum and natural gas production and the offshore petroleum and natural gas production industry segments, the EPA is proposing two equations based on whether the facility sends natural gas to sale, which reflect the statutory text at 136(f)(1)(A) and (B). For onshore and offshore petroleum and natural

gas production WEC applicable facilities that send natural gas to sale, we are proposing to use equation B-1 of 40 CFR 99.20(a). This equation multiplies the annual quantity of natural gas sent to sale from a WEC applicable facility by 0.002 (*i.e.*, 0.20 percent) and the density of methane (0.0192 metric tons per thousand standard cubic feet).[18] For onshore and offshore petroleum and natural gas production facilities that have no natural gas sent to sale, we are proposing to use equation B-2 of 40 CFR 99.20(b). Similar to proposed equation B-2, the annual quantity of oil sent to sale from a WEC applicable facility would be multiplied by 10 metric tons of methane per million barrels of oil. [19]

For WEC applicable facilities in the onshore petroleum and natural gas gathering and boosting, onshore natural gas processing, LNG import and export equipment, and LNG storage industry segments, CAA section 136(f)(2) requires the EPA to impose and collect WEC on facilities with reported methane emissions, in metric tons, that exceed 0.05 percent of the natural gas sent to sale from or through such facility. To determine the waste emissions threshold from a WEC applicable facility in these industry segments, we are proposing to use equation B-3 under 40 CFR 99.20(c). This equation would multiply the annual quantity of natural gas sent to sale from or through a WEC applicable facility by 0.0005 (*i.e.*, 0.05 percent) and the density of methane (0.0192 metric tons per thousand standard cubic feet) to determine the facility-level

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[18] Equation B-1 reflects the statutory text at 136(f)(1)(A), which states: "With respect to imposing and collecting the charge under subsection (c) for an applicable facility [in the onshore petroleum and natural gas production and offshore petroleum and natural gas production industry segments], the Administrator shall impose and collect the charge on the reported metric tons of methane emissions from such facility that exceed (A) 0.20 percent of the natural gas sent to sale from such facility…" 42 U.S.C. 7436(f)(1)(A).

[19] Equation B-2 reflects the statutory text at 136(f)(1)(B), which states: "With respect to imposing and collecting the charge under subsection (c) for an applicable facility [in the onshore petroleum and natural gas production and offshore petroleum and natural gas production industry segments], the Administrator shall impose and collect the charge on the reported metric tons of methane emissions from such facility that exceed… (B) 10 metric tons of methane per million barrels of oil sent to sale from such facility, if such facility sent no natural gas to sale." 42 U.S.C. 7436(f)(1)(B).

waste emissions threshold.[20] The EPA notes that certain facilities in the gathering and boosting and natural gas processing industry segments may have zero throughput values using the proposed approach, because these facilities either receive no natural gas, or process or dispose of natural gas received, in a manner that results in sending zero quantities of natural gas to sale. Treatment of these facilities is discussed in section II.B.6. of this preamble.

CAA section 136(f)(3) requires the EPA to impose and collect WEC on WEC applicable facilities in the onshore natural gas transmission compression, onshore natural gas transmission pipeline, and underground natural gas storage industry segments with methane emissions, in metric tons, that exceed 0.11 percent of the natural gas sent to sale from or through such facility. We are proposing that equation B-4 under 40 CFR 99.20(d) be used to calculate the waste emissions threshold from a WEC applicable facility in these industry segments. Using proposed equation B-4 the EPA would multiply the annual quantity of natural gas sent to sale from or through a WEC applicable facility by 0.0011 (*i.e.*, 0.11 percent) and the density of methane (0.0192 metric tons per thousand standard cubic feet) to determine the facility-level waste emissions threshold.[21]

The annual quantity of natural gas sent to sale from or through a facility reported under subpart W is reported in units of thousand standard cubic feet of natural gas per year, while facility methane emissions are reported in metric tons. The EPA is proposing to interpret the industry segment-specific methane intensity thresholds (*i.e.*, 0.20 percent, 0.05 percent, and 0.11

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[20] Equation B-3 reflects the statutory text at 136(f)(2), which states: "With respect to imposing and collecting the charge under subsection (c) for an applicable facility in [the onshore petroleum and natural gas gathering and boosting, onshore natural gas processing, LNG import and export equipment, and LNG storage industry segments], the Administrator shall impose and collect the charge on the reported metric tons of methane emissions that exceed 0.05 percent of the natural gas sent to sale from or through such facility." 42 U.S.C. 7436(f)(2).

[21] Equation B-4 reflects the statutory text at 136(f)(3), which states: "With respect to imposing and collecting the charge under subsection (c) for an applicable facility in [the onshore natural gas transmission compression, onshore natural gas transmission pipeline, and underground natural gas storage industry segments], the Administrator shall impose and collect the charge on the reported metric tons of methane emissions that exceed 0.11 percent of the natural gas sent to sale from or through such facility." 42 U.S.C. 7436(f)(3).

percent) indicated in CAA section 136(f)(1) through (3) to be in units of thousand standard cubic feet of methane of emissions per thousand standard cubic feet of natural gas. This requires reconciliation of methane emissions reported on mass basis and throughput reported on a volumetric basis. Because the waste emission charge is assessed using dollars per metric ton, the amount by which a facility is below or exceeding the waste emissions threshold must ultimately be converted to metric tons. The EPA's proposed approach in equations B-1, B-3, and B-4 calculates facility waste emissions thresholds in metric tons by calculating the volume of gas at the given industry segment-specific methane intensity and then calculating what the mass of that volume would be if it were methane by multiplying by the density of methane (0.0192 metric tons per thousand standard cubic feet at standard temperature and pressure of 60° F and 14.7 psia). This allows the waste emissions threshold to be directly compared to reported metric tons of methane. The proposed approach is mathematically equivalent to, but simpler than, an approach that would convert reported methane emissions to volume, subtract a volumetric waste emissions threshold from that reported volume, and then convert the resulting value back to metric tons methane. The EPA notes that the proposed approach does not require information on the constituents or density of natural gas throughput.

As described in this section of the preamble, we are proposing to calculate waste emissions thresholds at the facility level, using the industry segment-specific methane intensity threshold given in CAA sections 136(f)(1) through (3), and the industry segment throughput reported under part 98, subpart W. The vast majority of facilities report as a single subpart W facility to a single subpart W industry segment. However, as discussed in section II.A. of this preamble, there are a small number of reporters that report as a single subpart W facility to multiple subpart W industry segments. Specifically, for facilities that report to multiple industry segments under a single subpart W facility, we are proposing in 40 CFR 99.20(e) that the facility-level waste emissions threshold is determined as the sum of the waste emissions thresholds for each industry segment that the facility operates within.

The EPA proposes to interpret "natural gas sent to sale" to mean the amount of natural gas sent to sale from a facility in the onshore or offshore petroleum and natural gas industry segments, as reported under subpart W. The EPA proposes to interpret "natural gas sent to sale from or through" to mean the natural gas throughput volume for a facility not in the onshore or offshore petroleum and natural gas industry segments that aligns with the movement of gas through a facility (*e.g.*, gas transported rather than gas received), as reported under subpart W. For facilities in the onshore and offshore petroleum and natural gas production industry segments that do not send natural gas to sale, the EPA proposes to interpret "barrels of oil sent to sale" to mean the quantity of crude oil sent to sale, as reported under subpart W. The EPA is aware of other approaches for calculating "methane intensity" currently in use. These include methodologies that allocate total methane emissions between the petroleum and natural gas value chains and/or use methane rather than natural gas as the throughput value. CAA section 136(f)(1) through (3) refers to reported facility emissions and does not discuss allocation of emissions between petroleum and natural gas. With the exception of production facilities that only produce oil, the statutory text clearly lists natural gas as the throughput value. Further, the proposed approach can be implemented with data currently reported under subpart W, while alternative methane intensity methodologies would require reporting of additional data and increase the burden on the oil and gas industry. For example, an approach that calculates intensity as methane emissions divided by the methane in natural gas throughput would require facilities to collect and report additional information of the methane content of natural gas. An approach that calculates methane intensity as the mass of methane emissions divided by the mass of natural gas would require facilities to collect and report detailed information on all of the constituents of natural gas throughput. Finally, an approach that allocates methane emissions between the petroleum and natural gas value chains based on energy content would require facilities to collect and report detailed data on the constituents and energy content of all hydrocarbon throughput. The EPA

therefore believes that the proposed approaches not only follow a plain reading of CAA section 136(f) but are also the best and most reasonable approaches.

The EPA invites comments on our proposed approach for calculating the waste emissions thresholds, particularly our proposed methodology and the underlying assumptions used to calculate the waste emissions threshold in metric tons of methane.

2. Facility Methane Emissions

To determine the total methane emissions from a WEC applicable facility, the EPA proposes to use facility-level methane data as reported under subpart W. On August 1, 2023, the EPA proposed revisions to subpart W consistent with the authority and directives set forth in CAA section 136(h) as well as the EPA's authority under CAA section 114 (88 FR 50282). Facility methane emissions (and any emissions associated with exemptions from the WEC) would be calculated using methods and data required by subpart W for the emissions year covered by the annual WEC filing. For example, for the first year of the WEC (2024 emissions), WEC calculations would be based on the Subpart W requirements effective in 2024, and emissions year 2025 emissions and beyond would be based on Subpart W requirements effective in 2025 or any future revisions. The proposed approaches for calculating waste emissions thresholds and facility methane emissions align with the text of CAA section 136(f). CAA section 136(f)(1) through (3) states that the WEC is to be calculated based "on the reported metric tons of methane emissions from such facility that exceed" specified percentages of the "natural gas sent to sale from such facility" or "natural gas sent to sale from or through such facility" (or for onshore and offshore petroleum facilities that do not send gas to sale, "ten metric tons of methane per million barrels of oil sent to sale from such facility"). The EPA proposes to interpret "reported metric tons of methane emissions" to mean all reported methane emissions from a facility, as reported under subpart W. This value is an input to equation B-6.

3. Facility WEC Calculation

To calculate the amount by which a WEC applicable facility is below or exceeding the waste emissions threshold, the EPA proposes to use equation B-6 of 40 CFR 99.21, in which the facility waste emissions threshold, as determined in 40 CFR 99.20, is subtracted from facility total methane emissions. This calculation results in a value of metric tons of methane, the total facility applicable emissions, that is negative for facilities below the waste emissions threshold and positive for facilities exceeding the waste emissions threshold. The remainder of proposed 40 CFR 99.21 describes how to determine the WEC applicable emissions below or exceeding the waste emissions threshold considering any exemptions that may apply for WEC applicable facilities with total facility applicable emissions greater than 0 mt $CH_4$ (see section II.D. of this preamble for more information on the exemptions). As discussed in section II.C.2.b. of this preamble, the EPA proposes that WEC applicable facilities receiving the regulatory compliance exemption would be exempted from the WEC, and therefore would have zero WEC applicable emissions. For facilities in the onshore petroleum and natural gas production and offshore petroleum and natural gas production industry segments with total facility applicable emissions greater than 0 mt $CH_4$, any methane emissions associated with applicable exemptions would be subtracted to calculate WEC applicable emissions. For all other facilities, facility applicable emissions would equal WEC applicable emissions (unless the facility was receiving the regulatory compliance exemption).

The EPA invites comments on the proposed approach for calculating WEC applicable emissions.

4. Netting

The metric tons of methane emissions equal to, below, or exceeding the waste emissions threshold, or WEC applicable emissions, for each WEC applicable facility would be determined as specified in 40 CFR 99.21. CAA section 136(f)(4) allows for the netting of emissions at facilities below the waste emissions thresholds with emissions at facilities exceeding the waste

emissions thresholds for facilities under common ownership or control within and across all applicable industry segments identified in 136(d). The EPA proposes to implement netting using equation B-8 at 40 CFR 99.22. Equation B-8 would sum the WEC applicable emissions from all WEC applicable facilities under the common ownership of control of a WEC obligated party to calculate net WEC emissions for that WEC obligated party. The EPA's proposed interpretation of common ownership and control and definition of WEC obligated party are discussed in section II.C. of this preamble.

5. Waste Emissions Charge Calculation

CAA section 136(e) establishes annual $/metric ton charges for all methane emissions from WEC applicable facilities exceeding the waste emissions thresholds. The EPA proposes that a WEC obligated party's total annual WEC, or WEC obligation, would be calculated by multiplying its net WEC emissions, as determined by proposed Equation B-8, by the annual $/metric ton charge. WEC obligated parties with net WEC emissions less than or equal to zero would not have a WEC obligation. WEC obligated parties with net WEC emissions greater than zero would have a WEC obligation and be required to pay a waste emissions charge. WEC obligation calculations would be made for calendar years 2024, 2025, 2026, and each year thereafter as per proposed 40 CFR 99.23.

6. Gathering and Boosting and Processing Facilities with Zero Reported Throughput

The EPA is aware of a small number of gathering and boosting and natural gas processing facilities that emit methane and report under subpart W, but do not send gas to sale. As a result, these facilities would report zero natural gas volumes for the throughput metrics used in the proposed waste emissions threshold calculations. For the gathering and boosting industry segment, these may be facilities that receive natural gas but then reinject it underground or otherwise do not transport any natural gas. For the processing industry segment, these may be fractionation plants that only receive and process natural gas liquids (NGLs) and do not handle natural gas. Under the proposed approach, all reported methane emissions from facilities with no

reported throughput would be considered to be exceeding the waste emissions threshold. The EPA notes that the proposed approach is based on a plain reading of the statutory text; because these facilities would have a calculated waste emissions threshold of zero, all reported methane would by default be exceeding the threshold. The EPA requests comment on the treatment of gathering and boosting and natural gas processing facilities that do not report any volumes for the proposed WEC throughput metrics. The EPA requests comment on the proposed approach that would consider all reported methane from these facilities to be above the waste emissions threshold. The EPA also requests comment on an alternative approach that would consider all reported methane emissions from these facilities to be below the waste emissions threshold.

*C. Common Ownership or Control for Netting of Emissions*

1. EPA Interpretation and Proposal to Implement "Common Ownership or Control" for the Purposes of Part 99

CAA section 136(f)(4) allows WEC applicable facilities under "common ownership or control" to net "emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments" listed in section 136(d) and as defined in subpart W. The EPA interprets this to mean that for all eligible WEC applicable facilities under common ownership or control, the amount of metric tons of methane below the waste emissions thresholds (*i.e.*, the difference between emissions equal to the waste emissions threshold and reported emissions) at facilities below the waste emissions threshold may be used to net against the amount of metric tons of methane emissions that exceed the waste emissions thresholds at facilities above the waste emissions threshold. For the purposes of establishing common ownership or control under CAA section 136(f)(4), the EPA proposes to define "WEC obligated party" in 40 CFR 99.2. The EPA proposes that each subpart W facility would be associated with a single WEC obligated party (though each WEC obligated party may be associated with multiple subpart W facilities), which would be reported under the proposed requirements at 40 CFR 99.7. As discussed in section II.B.4. of this preamble and proposed in 40

CFR 99.22, all WEC applicable facilities associated with a common WEC obligated party would be able to net emissions for the purposes of calculating the WEC obligated party's net emissions and total WEC obligation.

The EPA proposes that the WEC obligated party be the subpart W facility "owner or operator" as reported under 40 CFR 98.4(i)(3). The EPA proposes definitions for facility "owner" and "operator" that are applicable to the offshore petroleum and natural gas production, onshore natural gas processing, onshore natural gas transmission compression, underground natural gas storage, LNG import and export equipment, and LNG storage industry segments at 40 CFR 99.2. The onshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting, and onshore natural gas transmission pipeline industry segments each have separate definitions for facility "owner or operator" proposed at 40 CFR 99.2. These proposed definitions are identical to the corresponding definitions in 40 CFR part 98; the EPA proposes that the owner or operator associated with a subpart W facility as reported under 40 CFR 98.4(i)(3) (regarding the list of owners or operators of the facility for the certification of representation of the designated representative) would also be the WEC obligated party for that facility. The EPA believes that the proposed approach for using facility owner or operator for the purpose of defining common ownership or control aligns with a plain reading of the statutory text. CAA section 136(c) states that a charge on methane emissions that exceed the waste emissions threshold shall be imposed and collected "from an owner or operator of an applicable facility." Further, in the context of required revisions to the subpart W methodologies used to calculate methane emissions, CAA section 136(h) states that those revisions must be made to "allow owners and operators of applicable facilities to submit empirical emissions data, in a manner to be prescribed by the Administrator, to demonstrate the extent to which a charge under subsection (c) is owed." Thus, CAA section 136(c) requires the charge to be imposed and collected on a facility owner or operator, and CAA section 136(h) presumes that owners and operators are responsible for submitting empirical data. Furthermore, since the list of owners or

operators for each facility is directly reported under 40 CFR 98.4(i)(3), an established program at the time that Congress drafted CAA section 136, the EPA proposes that under the best reading of the statutory text, the facility owner or operator would be used as the entity for establishing common ownership or control of subpart W facilities within and across all applicable subpart W industry segments.

Although the EPA believes that the owner or operator approach is the most appropriate for netting under WEC, we seek comment on an alternative approach that would use the parent company of a facility's owner or operator for the WEC obligated party and determining common ownership or control of facilities. For each subpart W facility, the facility owner or operator and parent company are reported under 40 CFR 98.4(i)(3) and 40 CFR 98.3(c)(11), respectively. The parent company represents the highest-level company based in the United States with an ownership interest in the facility. For parent company reporting, the percent ownership in the facility is also reported under 40 CFR 98.3(c)(11). Because a parent company has an ownership interest in a subpart W facility, multiple facilities may be said to be owned by the same parent company and might also be considered as being under common ownership or control of that parent company. So, one difference between using the owner or operator rather than a parent company for establishing common ownership or control is the number of facilities that may be brought under common ownership or control in each approach. For most facilities, the reported owner or operator is a subsidiary of the reported parent company. A single parent company may have multiple different owners or operators (*i.e.*, subsidiaries) associated with facilities within and across subpart W industry segments. For example, an onshore petroleum and natural gas production facility and onshore natural gas processing facility owned by the same parent company may each have a different owner or operator. The number of "common" facilities is usually higher when the parent company is used, and lower when the owner or operator is used. The parent company approach would therefore provide a broader interpretation of common ownership or control relative to use of owner or operator. However, it is important to note that at

the time CAA section 136 was enacted in 2022, the term "common ownership or common control" was a term used in the subpart W regulations. Under the subpart W regulations, the EPA has used the term "common ownership or control" to refer to the owner or operator, not to the parent company. Congress was likely aware of this definition when it enacted section 136. Therefore, the EPA is proposing to use facility owner or operator for the purpose of establishing common ownership or control based on a plain reading of CAA section 136(c), and believes that this is the better reading of the text in context with subpart W. However, the EPA requests comment on both the proposed approach using facility owner or operator and on an alternative approach using facility parent company for determining common ownership or control of WEC applicable facilities.

In some cases, a WEC applicable facility may have multiple owners or operators reported under 40 CFR 98.4(i)(3). In these situations, the EPA proposes that the facility owners or operators would designate one of the owners or operators as the WEC obligated party for that facility, as proposed in 40 CFR 99.4. Under the proposed approach, the process for selection of the WEC obligated party at facilities with multiple owners or operators would be similar to the approach for selecting a designated representative under 40 CFR part 98. This process would require selection of a single WEC obligated party for the facility by an agreement binding on each of the owners or operators associated with the facility. The proposed approach for facilities with multiple owners allocates all facility-level methane emissions below or exceeding the waste emissions thresholds to a single WEC obligated party. We request comment on the proposed approach of allocating all methane emissions below or exceeding the waste emissions thresholds from a facility with multiple owners or operators to a single WEC obligated party. We request comment on other approaches that could be used to allocate emissions to owners or operators at facilities with multiple owners or operators. We request comment on the proposed approach of requiring the group of facility owners or operators to determine which owner or operator is the

WEC obligated party, and alternative approaches for designating the WEC obligated party, at facilities with multiple owners or operators.

The EPA also evaluated an approach that would allocate facility methane emissions below or exceeding the waste emissions thresholds at facilities with multiple owners to parent companies based on their reported percent ownership in the facility. Some subpart W facilities with multiple owners have parent companies with very small (*i.e.*, less than one percent) equity shares. The minority owners may include individuals and small oil and gas companies with no operational control over the facility. Allocating methane emissions below or exceeding the waste emissions thresholds based on facility ownership would expose a larger number of individuals and small companies to potential WEC obligations. We note that allocating methane emissions from facilities with multiple owners to each owner based on facility ownership would only be possible using a parent company approach and not using the proposed owner or operator approach because GHGRP reporting does not currently include data on owner or operator facility equity share or include direct linkages between owners or operators and parent companies that could be used to assign facility ownership percentages to owners or operators. There may also be situations in which the facility owner or operator is a third-party operator with no ownership in the facility either directly or through their parent company.

We request comment on an alternate approach that would allocate methane emissions to parent companies using percent ownership in the facility as well as other possible allocation methodologies for facilities with multiple parent companies. We request comment relevant to understanding other appropriate approaches for allocating emissions from a facility with multiple parent companies or owners or operators to a single WEC obligated party or multiple WEC obligated parties. For example, how are costs allocated at such facilities, and are they usually shared by parent companies (*e.g.*, based on percent ownership in the facility), entirely borne by the facility operator, or does cost sharing vary based on facility-specific contractual agreements?

2. Facilities Eligible for the Netting of Emissions

The EPA's proposed implementation of CAA section 136(f)(4) would define which types of applicable subpart W facilities are eligible to net emissions. We propose to establish netting eligibility criteria based on a facility's total reported subpart W GHG emissions, status in relation to the regulatory compliance exemption, and overall regulated status under the GHGRP. In our proposed approach to netting, we chose interpretations which were the most consistent with a plain reading of the CAA, as well as the most transparent and straightforward to implement. As described in more detail in the following sections, our approach assumes that if a facility's emissions are not subject to the WEC, either because the facility is not a WEC applicable facility, or because a WEC applicable facility receives the regulatory compliance exemption, that facility's emissions do not factor into the netting of emissions for a WEC obligated party. In other words, only WEC applicable facilities may net, and only WEC applicable emissions may be netted. As will be explained further in section II.C.2.a. of this preamble, we believe this interpretation is consistent with CAA section 136(f)(4) "the Administrator shall allow for the netting of emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments identified in subsection (d)," since the reference to "applicable thresholds" and "applicable segments", which reflect other subsections under CAA section 136, implies that only WEC applicable emissions should be considered in the netting calculation. We note that for applicable facilities with unreasonable delay or plugged well exemptions, under the proposal, emissions associated with these exemptions would be removed from any emissions exceeding the waste emissions threshold prior to netting calculations.

a. Facilities Required to Report to GHGRP and That Have Subpart W Emissions Greater Than 25,000 Metric Tons of $CO_2e$

In accordance with CAA section 136(c) and the proposed definition of "WEC applicable facility" in 40 CFR 99.2, we are proposing that subpart W facilities that have subpart W

emissions greater than 25,000 mt $CO_2e$ are eligible for netting, with the exception of those that are receiving the regulatory compliance exemption (as discussed in section II.D.2. of this preamble). Facilities that report less than 25,000 mt $CO_2e$ under subpart W are not subject to the WEC, and the EPA proposes that such facilities would not be eligible for netting. These types of facilities are discussed in greater detail in section II.C.2.c. of this preamble. The EPA's proposed approach follows what the agency considers to be the best reading of the plain text of, and the relationship between CAA sections 136(d), 136(c), and 136(f) (which includes subsections 136(f)(4) and 136(f)(1)-(3)). The following sections will provide an overview of the relevant statutory text, and the corresponding basis for the EPA's belief that only WEC applicable facilities may net, and only WEC obligated emissions may be netted, under CAA section 136(f)(4).

CAA section 136(d) introduces the nine industry segments within which all subpart W facilities must fall in order to be evaluated for WEC applicability. Importantly, facilities within these segments are "applicable facilities", per CAA section 136(d), but they are not necessarily "WEC applicable facilities", subject to possible WEC obligation, unless they report over 25,000 mt $CO_2e$ per year under subpart W. CAA section 136(c) clarifies this point. Specifically, CAA section 136(c) requires the Administrator to impose and collect a charge on the owner or operator "of an applicable facility that reports more than 25,000 metric tons of carbon dioxide equivalent of greenhouse gases emitted per year pursuant to subpart W". Thus, building upon the CAA section 136(d) definition, CAA section 136(c) establishes that only facilities which both fall within one or more of the nine CAA section 136(d) industry segments *and* report more than 25,000 mt $CO_2e$ under subpart W are subject to the WEC program. For clarity, in this rulemaking the EPA refers to these facilities as "WEC applicable facilities".

CAA section 136(f), which is entitled "Waste Emissions Threshold", includes a series of subsections under this heading. Subsections 136(f)(1)-(3) illustrate the meaning of "waste emissions threshold" in this context, and explain that these are actually a series of thresholds

which determine when and how to impose a charge on methane emissions from WEC applicable facilities, depending on which industry segment or segments they fall under. Specifically, the nine CAA section 136(d) industry segments are categorized into four groups, and a waste emissions threshold is applied to each of the four. CAA section 136(f)(1) covers offshore and onshore petroleum and natural gas production (industry segments (1) and (2) under CAA section 136(d)), and further divides this category depending on whether or not natural gas is sent to sale: "With respect to imposing and collecting the charge under subsection (c) for an applicable facility in an industry segment listed in paragraph (1) or (2) of subsection (d), the Administrator shall impose and collect the charge on the reported metric tons of methane emissions from such facility that exceed (A) 0.20 percent of the natural gas sent to sale from such facility; or (B) 10 metric tons of methane per million barrels of oil sent to sale from such facility, if such facility sent no natural gas to sale."[22]

CAA sections 136(f)(2) and (3) follow the same model: section 136(f)(2) establishes thresholds for nonproduction petroleum and natural gas systems (industry segments (3), (6), (7), and (8) under section 136(d)[23]), and imposes a charge on "the reported metric tons of methane emissions that exceed 0.05 percent of the natural gas sent to sale from or through such facility"[24]; and section 136(f)(3) establishes thresholds for natural gas transmission (industry segments (4), (5), and (9)[25]) and imposes a charge on "the reported metric tons of methane emissions that exceed 0.11 percent of the natural gas sent to sale from or through such facility."[26] But each industry-specific threshold is introduced in the same way: "With respect to *imposing and collecting the charge under subsection (c) for an applicable facility in an industry segment listed*

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[22] 42 U.S.C. at 7436(f)(1).
[23] Specifically: (3) onshore natural gas processing; (6) liquefied natural gas storage; (7) liquefied natural gas import and export equipment; and (8) onshore petroleum and natural gas gathering and boosting.
[24] *Id.* at section 7436(f)(2).
[25] Specifically, (4) onshore natural gas transmission compression; (5) underground natural gas storage; and (9) onshore natural gas transmission.
[26] *Id.* at section 7436(f)(3).

in paragraph (x) of subsection (d), [charges shall be imposed as follows]". Following this plain text, it is clear that the CAA section 136(f) waste emission thresholds apply *only to WEC applicable facilities* – that is, facilities within one or more of the nine WEC industry segments listed in CAA section 136(d) which emit more than 25,000 mt per year $CO_2e$ under subpart W, and thus may be subject to charge under CAA section 136(c).

Finally, in the netting provision itself, CAA section 136(f)(4), states that "in calculating the total emissions charge obligation for facilities under common ownership or control, the Administrator shall allow for the netting of emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments identified in subsection (d)". As noted above, the EPA is proposing that this netting provision applies to WEC applicable facilities and WEC applicable emissions only, for three compelling reasons.

First, the EPA believes that per the best reading of the statute, the term "applicable thresholds" refers to the waste emission thresholds outlined in CAA section 136(f)(1)-(3). This is important because, as noted above, the waste emissions thresholds apply *only* to WEC applicable facilities – they determine whether, and how, a charge shall be imposed on methane emissions from a facility which has already been triggered into the WEC program by virtue of its 25,000 mt per year $CO_2e$ in subpart W. The thresholds do not apply to facilities which emit fewer than 25,000 mt per year of $CO_2e$ under subpart W, because under CAA section136(c), no charge may be imposed or collected on such facilities. Facilities which emit less than 25,000 mt per year of $CO_2e$ under subpart W may emit any amount of methane, but these methane emissions are not WEC applicable emissions: they cannot be evaluated according to the waste emissions thresholds, and they cannot be considered to fall either above or below these thresholds. Thus, in "*account[ing] for facility emissions levels that are below the applicable thresholds*", the EPA understands that it must account for WEC applicable emissions from WEC applicable facilities

which fall below the waste emissions thresholds, and produce a negative value under Equation B-6 (see above at section II.B.3.).

As previously stated, EPA's conclusion that the term "applicable thresholds" in CAA section 136(f)(4) refers to the waste emissions thresholds outlined in CAA section 136(f)(1)-(3) is supported by both the text and structure of the statute. First, the structure of the statute strongly supports the presumption that CAA section 136(f)(4) refers to netting based on a facility's relationship to the waste emissions thresholds because CAA section 136(f)(4) appears as part of CAA section 136(f), under the "waste emissions threshold" heading, and immediately following CAA section 136(f)(1)-(3)'s establishment of the specific waste emissions thresholds for each industry segment. It follows that CAA section 136(f)(4)'s reference to "applicable thresholds" refers to these industry segment-specific requirements, and accordingly "applicable segments" refers to the industry segments identified in CAA section 136(f)(1)-(3).

A close reading of the text also strongly supports our presumption regarding the waste emissions thresholds, because CAA section 136(f)(4) refers to facility emissions levels that are "below the *applicable thresholds*," plural. The use of the plural, and the use of the term "applicable," both indicate that Congress was referring here to the multiple waste emissions thresholds introduced in CAA sections 136(f)(1) through (3), which specifically and separately apply to WEC applicable facilities within various subsets of industry segments, defined in CAA section 136(d). Again, these separate thresholds *only* apply to WEC applicable facilities, which emit over 25,000 tons per year of $CO_2e$ per year.

In addition to the "applicable thresholds" question, the EPA believes that Congress's use of the term "applicable segments" in stating that EPA may "redu[ce] the total obligation to account for facility emissions levels that are below the applicable thresholds *within and across all applicable segments identified in subsection (d)*," is significant here. While CAA section 136(d) introduces the nine relevant "industry segments" within which all WEC applicable facilities must fall, CAA section 136(f)(4) classes these segments into four groups, and is the

only provision to use the term "applicable segments". As noted above, CAA section 136(f) establishes a set of requirements determining when and how to impose a charge on those facilities triggered into the program, depending on their industry segment and the amount of methane they emit. It follows that CAA section 136(f)(4)'s reference to "applicable thresholds" refers to these four group-specific thresholds, and "applicable segments" refers to the nine segments within the four segment groups. In other words, each group of segments constitutes the "applicable" segments to their corresponding applicable threshold. This is important, again because the four groups laid out under CAA section 136(f) include only WEC applicable facilities.

Finally, Congress's statement that netting shall be employed "in calculating the total emissions charge obligation for facilities under common ownership or control", further indicates that only WEC applicable facilities may be netted. Logic indicates that only WEC applicable facilities, with WEC applicable emissions, would be relevant to a determination of total emissions charge obligation. As regards the WEC program, WEC obligated parties are concerned with methane emissions for the WEC applicable facilities for which they are responsible – not various other subpart W facilities for which a WEC charge can never be imposed. Accordingly, the EPA believes that under the best reading of this provision WEC obligated parties may net WEC applicable methane emissions between facilities in different segments, as long as all facilities are WEC applicable facilities.

b. Facilities With Subpart W Emissions Greater Than 25,000 Metric Tons of $CO_2e$ That Are Receiving the Regulatory Compliance Exemption

The EPA proposes that during such time that a facility receives the regulatory compliance exemption, that facility would have zero WEC applicable emissions and thus would not be able to participate in the netting of methane emissions across facilities under common ownership or control of a WEC obligated party. The EPA's proposed approach is based on a plain reading of the statutory text, and follows the same reasoning outlined in section II.C.2.a. of this preamble,

which explains that under the best reading of the text, only WEC applicable facilities may net.. This section will further expand upon EPA reasoning that only WEC applicable emissions may be netted, and clarify this point for purposes of the regulatory compliance exemption.

CAA section 136(f)(6)(A) states that "[c]harges shall not be imposed pursuant to subsection (c) on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111" if specific criteria are met (these criteria are discussed in section II.D.2. of this preamble). The EPA's interpretation of the regulatory compliance exemption is that, for a WEC applicable facility meeting the exemption criteria, the entire facility is exempted, and therefore the facility does not generate WEC-applicable emissions. In order to net, facilities must be WEC applicable facilities (they must emit over 25,000 $CO_2e$ per year under subpart W) and they must also generate WEC applicable emissions (methane emissions below or above the WEC emissions thresholds *that are subject to charge*.) Again, this follows from the text. Section 136(f)(4) applies "in calculating the total emissions charge obligation" only. Emissions which are subject to an exemption are by definition not subject to charge. WEC applicable emissions are only those emissions subject to charge under section 136(c). Because, under the proposed approach WEC applicable facilities with the regulatory compliance exemption would have zero WEC applicable emissions, these facilities would by default not be able to participate in netting (*i.e.*, they would have no emissions to net). The proposed approach of facilities with the regulatory compliance exemption having zero WEC applicable emissions allows for the practical implementation of the exemption within the broader framework of the proposed WEC calculations. Assigning exempted facilities zero WEC applicable emissions ensures that charges shall not be imposed on these facilities without interfering with netting calculations or removing facility-specific reporting elements necessary for WEC implementation. Such facilities would continue to be included in WEC filings reported under part 99 as long as they remain WEC applicable facilities. Further, if such facilities fall out of compliance such that the regulatory compliance exemption no longer applies

and they again generate WEC applicable emissions, such facilities would again be included in netting.

The EPA notes that under the proposed approach, facilities with emissions below the waste emissions threshold would not receive the regulatory compliance exemption (see discussion in section II.D.2.f. of this preamble), and thus these facilities would always have WEC applicable emissions and would be able to participate in netting across facilities under common ownership or control.

The EPA requests comment on the proposed approach in which WEC applicable facilities receiving the regulatory compliance exemption would have zero WEC applicable emissions. The EPA requests comment on other options for WEC applicable facilities receiving the regulatory compliance exemption and their treatment in the context of netting.

c. Exclusion of Facilities Reporting 25,000 or Fewer Metric Tons of $CO_2e$ to Subpart W of Part 98

Per CAA section 136(c), the WEC shall only be imposed on owners or operators of applicable facilities that report more than 25,000 mt $CO_2e$ under subpart W. A large number of facilities that report under the GHGRP have subpart W emissions below 25,000 mt $CO_2e$. A part 98 subpart W facility is generally allowed to cease reporting or "offramp" due to meeting either the 15,000 mt $CO_2e$ level or the 25,000 mt $CO_2e$ level for the number of years specified in 40 CFR 98.2(i) based on the $CO_2e$ reported, as calculated in accordance with 40 CFR 98.3(c)(4)(i) (*i.e.*, the annual emissions report value as specified in that provision). Some facilities have dropped below 25,000 mt $CO_2e$ in total reported emissions to part 98 and are continuing to report while on the reporting offramp. Other facilities report emissions under multiple subparts (*e.g.*, subpart W and subpart C) and have total emissions equal to or greater than 25,000 mt $CO_2e$ across both subparts, but subpart W emissions below 25,000 mt $CO_2e$. The latter category includes processing plants, transmission compressor stations, underground storage facilities, LNG storage facilities, and LNG import and export facilities that report their combustion

emissions under subpart C. Many of these facilities have total GHGRP emissions exceeding 25,000 mt $CO_2e$, but subpart W emissions that alone fall below this threshold.

We are proposing that subpart W facilities with subpart W emissions equal to or below 25,000 mt $CO_2e$ are not WEC applicable facilities and are therefore excluded from netting. This proposed approach aligns with a plain reading of the requirement in CAA section 136(c) that only applicable facilities with subpart W emissions exceeding 25,000 mt $CO_2e$ are subject to the WEC – facilities below this threshold are not subject to the WEC and therefore do not generate WEC applicable emissions and are not able to net emissions.

d. Exclusion of Facilities Not Required to Report to the GHGRP

Per CAA section 136(c) and (d), CAA section 136(f)(4), and the proposed definition of "WEC Applicable Facility" in 40 CFR 99.2, which reflects the statutory text at CAA section 136(d), we are proposing that facilities that are not required to report to the GHGRP, and thus are not WEC applicable facilities, would not be eligible for netting. Again following the reasoning outlined in section II.C.2.a. of this preamble, the EPA's proposed approach is based on a plain reading of CAA section 136(f)(4), which states that netting is allowed within and across the nine subpart W industry segments identified in CAA section 136(d); section 136(d), which states that "applicable facility(ies)" are facilities within industry segments "as defined in subpart W"; and section 136(c), which states that the WEC is only applicable to subpart W facilities that report more than 25,000 $CO_2e$ per year. Following the plain text, only facilities subject to subpart W may be evaluated as possible WEC applicable facilities, and only WEC applicable facilities (subpart W facilities emitting over 25,000 $CO_2e$) can have WEC applicable emissions that may be subject to charge. As explained in section II.C.2.a. of this preamble, only WEC applicable facilities may net, and only WEC applicable emissions may be netted. Further, CAA section 136(c) states that the WEC is only applicable to certain facilities that report under subpart W of the GHGRP.

*D. Exemptions to the Waste Emissions Charge*

1. Exemption for Emissions From Eligible Delays in Environmental Permitting Under CAA Section 136(f)(5)

CAA section 136(f)(5) establishes an exemption for emissions resulting from delay in environmental permitting by stating, "Charges shall not be imposed pursuant to paragraph (1) on emissions that exceed the waste emissions threshold specified in such paragraph if such emissions are caused by unreasonable delay, as determined by the Administrator, in environmental permitting of gathering or transmission infrastructure necessary for offtake of increased volume as a result of methane emissions mitigation implementation."

This provision would exempt from the charge certain emissions occurring at facilities in the onshore and offshore production segments. Paragraph (1) referenced in the exemption refers to CAA section 136(f)(1), which establishes the waste emissions threshold for applicable facilities in the production sector, as discussed in section II.B. of this preamble. The exemption is limited to emissions occurring as a result of certain delays in permitting of gathering or transmission infrastructure necessary for offtake of increased volume as a result of methane emissions mitigation implementation. Infrastructure necessary for offtake would include gathering and transmission pipelines and compressor stations. Increased volume as a result of methane emissions mitigation implementation would include increased natural gas amounts available for transport that would have otherwise been emitted.

a. Emissions Eligible for the Permitting Delay Exemption

Given the complexity of defining and determining "unreasonable delay" related to environmental permitting, the EPA is proposing a simplified approach of establishing a set of four criteria for applying the unreasonable delay exemption established by CAA section 136(f)(5). These criteria would 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. The EPA understands that the issue of what constitutes an unreasonable delay is multi-faceted and may be

quite different under different factual circumstances. At the same time, the EPA believes it is important in the context of this program to propose a definition that is both consistent with the statutory charge and administrable within the capabilities of the EPA. With those caveats in mind, the EPA proposes the following four criteria for implementing this exemption: (1) the facility must have emissions that exceed the waste emissions threshold; (2) neither the entity seeking the exemption, nor the entity responsible for seeking the permit, may have contributed to the delay; (3) the exempted emissions must be those (and only those) resulting from the flaring of gas that would have been mitigated without the permit delay, and the flaring that occurs must be in compliance with all applicable local, state, and Federal regulations regarding flaring emissions; and (4) a set period of months must have passed from the time a submitted permit application was determined to be complete by the applicable permitting authority.

The EPA believes this approach meets the Congressional intent of this exemption while creating a program that can be implemented annually allowing for collection of WEC in a timely manner. The proposed approach is intended to reduce burden on the companies and government compared with an approach that would not specify a timeframe or other criteria but would rely on decisions made on a case-by-case basis to determine whether the timing and other circumstances of an individual permitting action constitutes an unreasonable delay. We note, however, that these criteria outlined above, including the timeframe, are proposed for the purpose of defining the emissions eligible for an exemption for the purposes of the implementation of CAA 136(f)(5) and this proposed rulemaking only and are not applicable for defining an unreasonable delay outside of this context. The criteria introduced in this section do not apply to the determination of unreasonable delay for purposes of the National Environmental Policy Act (NEPA), the Administrative Procedure Act (APA), or any other law involved in permitting processes or any other agency actions. In particular, the timeline criterion should not be considered applicable or informative to the determination of unreasonable delay in any

context other than determining emission exemptions for the implementation of CAA 136(f)(5) and this proposed rulemaking.

The first criterion, that the facility must have emissions that exceed the waste emissions threshold, is based on CAA 136(f)(5), which states that "charges shall not be imposed pursuant to paragraph (1) on emissions that exceed the waste emissions threshold specified in such paragraph if such emissions are caused by unreasonable delay." A straightforward reading of this language limits the exemption to emissions exceeding the waste emissions threshold. In addition, since charges would not be imposed on emissions below the threshold, an exemption is unnecessary in cases where facility emissions are below the threshold. The EPA proposes that emissions from facilities that are below the waste emissions threshold would not be exempted. The EPA proposes that for facilities that exceed the waste emissions threshold, emissions eligible for the permitting delay exemption would be subtracted from the facility emissions that exceed the waste emissions threshold. The exempted emissions would not be used to reduce emissions totals below the threshold (*i.e.,* the lowest possible WEC applicable emissions for a facility with the exemption would be zero).

The second criterion relates to responsiveness on the part of the production sector WEC applicable facility reporting emissions caused by a delay in gathering or transmission infrastructure and the gathering or transmission infrastructure permit applicant: neither the entity potentially eligible for the exemption (*i.e.,* a WEC applicable facility in the onshore or offshore production sector) nor the entity seeking the environmental permit (*e.g.,* an entity seeking a permit for gathering or transmission infrastructure) has contributed to the delay in permitting.

The EPA is proposing that contributions to the delay by either the production entity potentially eligible for the exemption or the entity seeking the environmental permit would be determined based upon the timeliness of response to requests for additional information or modification of the permit application. Delays in response exceeding the response time requested by the permitting agency, or requested by the relevant production or gathering or transmission

infrastructure entity seeking the permit, or responses that exceed 30 days from the request if no specific response time is requested, would be considered to contribute to the delay in processing the permit application. Note that this proposed determination of what would constitute a delay eligible for the exemption in environmental permitting would be specific solely to implementation of CAA section 136(f)(5) and this proposed rulemaking for part 99, and would not necessarily be applicable to any other section of the CAA, or any permitting program administered by the EPA or by a state or local permitting authority.

The third criterion is that the exempted emissions must be those resulting from the flaring of gas that would have been mitigated without the permit delay – and that exempted emissions must be in compliance with all applicable local, state, and Federal regulations regarding flaring emissions. The EPA believes that this approach reasonably follows from the text of section 136(f)(5), which exempts emissions caused by unreasonable delay in the permitting of "gathering or transmission infrastructure *necessary for offtake of increased volume as a result of methane emissions mitigation implementation*."[27] Following this statutory directive, the EPA is proposing that exempted emissions are flaring emissions which (1) would otherwise be captured in accordance with applicable regulations but (2) are not captured due to a delay in the permitting necessary for offtake. It is anticipated that operations seeking the exemption could include oil production sites planning to send gas to sale, rather than flaring the emissions, or facilities that produce natural gas, condensate or natural gas liquids and that expand operations and are flaring gas because a pipeline is not yet available. Only flaring emissions caused by the unreasonable delay in permitting, and occurring in compliance with all applicable regulations, would be exempt. Other emissions occurring at the wellsite would not be exempt because they are not associated with the delay or because they do not occur in compliance with applicable regulations. For example, fugitive emissions from leaks would occur with or without the delayed

[27] 42 U.S.C. 7436(f)(5) (emphasis added).

infrastructure, and venting emissions is widely restricted due to Federal, state, or local regulations on venting.

Flaring emissions that occur as a result of flaring that is not in compliance with applicable regulations are ineligible for the exemption. This approach accords with the text of section 136(f)(5), which states that the exemption is for emissions occurring as a result of unreasonable delay in permitting required for the build out of infrastructure "necessary for offtake of increased volume *as a result of* methane emissions mitigation."[28] Regulations limiting flaring and venting will result in an increased volume of gas that must be captured and transmitted, compared with a circumstance without methane emissions mitigation implementation, in which gas is flared or vented on site. Thus, the EPA understands that this provision is designed to exempt flaring done in compliance with regulations, where sources are prepared to capture gas but cannot yet do so due to lack of offtake infrastructure. However, a delay in permitting does not allow exemption from other applicable local, state, and Federal regulations regarding flaring. Thus, the flaring emissions exempt under 136(f)(5) cannot exceed flaring emissions allowable under other applicable local, state, and Federal regulations.

The fourth criterion is that an eligible "unreasonable delay" would be a delay that exceeds a set period of months specified in the final rule. The EPA's current assessment is that this time period would likely fall somewhere between 30 and 42 months from the date that a submitted permit application was determined to be complete by the relevant permitting authority. This time period is not tied to the timing of the WEC; a facility that meets all four criteria would be eligible for the exemption in the first year of the WEC if the time period requirement has been met. The relevant permitting authority could be the United States Federal Energy Regulatory Commission (FERC), or other federal, state or local agencies that issue environmental permits. The environmental permitting process can require multiple steps including, but not limited to: the entity preparing and submitting a permit application; the entity responding to comments with

[28] 42 U.S.C. 7436(f)(5)

supporting information; the regulatory agency preparing a draft permit; public comment; and preparation and issuance of the final permit. Target dates for permit actions can vary by regulatory agency and depend, for example, on whether the relevant permit is for a new or existing source, or whether the action is a major or minor modification. The EPA is proposing to set a timeframe for unreasonable delay that is not specific to particular permitting actions or agency timelines.

The EPA is proposing to set a timeline somewhere in the range of 30 to 42 months, with the default to be specified in the final rule after consideration of comments received. This preliminary range is based on the EPA's current understanding of timelines for oil and gas permitting across Federal agencies. In particular, the preliminary range is informed by the EPA's review of data made available through the Federal Permitting Improvement Steering Council (FPISC) through Title 41 of the Fixing America's Surface Transportation Act (FAST-41). The "Recommended Performance Schedules for 2020" released by FPISC contains data for the Federal review and permitting of 18 pipeline projects under the FAST-41 program. [29] For these projects, the mean time from receipt by FERC of a complete application to the issuance of a certificate of public convenience and necessity for interstate natural gas pipelines was 23 months, with three of the 18 projects (17 percent) exceeding 30 months. Criteria for inclusion in the FAST-41 program include projects that are considered likely to require investment exceeding $200,000,000 and that do not qualify for abbreviated review under applicable law; or projects of a size and complexity that the FPISC determines are likely to benefit from inclusion.[30] On this basis, the EPA believes the FAST-41 dataset may be a conservative population (*i.e.*, require

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[29] Federal Permitting Improvement Steering Council, "2020 Recommended Performance Schedules." Federal Infrastructure Permitting Dashboard. April 6, 2020. *https://www.permits.performance.gov/fpisc-content/recommended-performance-schedules*. Accessed August 28, 2023.

[30] Federal Permitting Improvement Steering Council, "FAST-41 Fact Sheet." Federal Infrastructure Permitting Dashboard. September 13, 2022. *https://www.permits.performance.gov/documentation/fast-41-fact-sheet*. Accessed August 28, 2023.

more complex environmental review and permitting) when compared to the total of all gathering or transmission infrastructure projects.

The proposed range of 30 to 42 months also takes into account the 2023 Fiscal Responsibility Act, which set a limit under the National Environmental Policy Act of 1 year for completion of an Environmental Assessment and 2 years for completion of an Environmental Impact Statement unless extended by the lead agency in consultation with the applicant or project sponsor. However, the amount of time necessary to complete an Environmental Assessment or Environmental Impact Statement will vary depending on the specific agency action at issue, and this proposed timeline is not intended to reflect a determination of the reasonable length of a time necessary to complete such analysis in any specific instance. For projects requiring approval or permitting from a federal agency, completion of an Environmental Assessment or Environmental Impact Statement must occur prior to the agency taking a final agency action. Additional steps in the process that must be completed following completion of review under NEPA may add several months to the overall timeframe (*e.g.,* convening of FERC to approve or deny a certificate of public convenience and necessity).

We note that all four criteria must have been met for the EPA to determine that for the purpose of this exemption, emissions were caused by an unreasonable delay. No single factor, including timing, would be determinative as to whether a delay unreasonable in the context of this exemption. We are not assessing whether a delay of any particular period of months alone (i.e., in the absence of the other three criteria) should be considered unreasonable in the context of this exemption, and we are not assessing the reasonableness of a particular timeframe or collection of conditions outside of the context of this exemption specific to CAA section 136. An assessment of reasonableness in any other context depends on the circumstances specific to that context, which can vary considerably and there is no straightforward way to determine whether a delay is reasonable or unreasonable that applies to all contexts. We note that using the approach of requiring four criteria to be met may not fully capture case-by-case circumstances and

therefore may not always produce the same determination as a more holistic evaluation would. We have proposed this approach of using four criteria, including one specifying a set timeframe, for the purposes of this exemption only to simplify this process, and for clarity and administrability; we understand that longer permitting timeframes are often not unreasonable in other contexts.

As an alternative to specifying that an "unreasonable delay" requires a set period of months to have elapsed since a permit application is deemed complete (in addition to the other three criteria), the EPA considered adopting a case-by-case process for determining whether an unreasonable delay in permitting has occurred. Under such an approach, the exemption for unreasonable delay could only be utilized by a facility that has obtained a facility-specific finding of unreasonable delay from the EPA. The EPA would evaluate documentation provided by a WEC obligated party to determine if there was an unreasonable delay. A WEC obligated party would not exclude emissions it claimed are associated with the unreasonable delay exemption until such time as it obtained an unreasonable delay finding from the EPA. In other words, emissions associated with a claim of unreasonable delay for which there is not an unreasonable delay determination by the EPA could not be subtracted from the emissions totals in the initial WEC filing. If the EPA subsequently were to make such a finding, the EPA would authorize a refund in accordance with its determination. Documentation could include information such as that currently proposed to be reported, such as information on mitigation activities, permitting timing, and regulations relevant to flaring, and information currently proposed as recordkeeping requirements, such as detailed records on responsiveness, in addition to other documentation specific to the relevant gathering or transmission infrastructure environmental permit, such as on the expected timing for the specific environmental permit(s) sought and the type of information that would be needed to support the claim that the permit(s) is delayed beyond what could be considered a reasonable timeframe. A case-by-case approach for reviewing and approving the unreasonable delay exemption would help ensure the validity of

individual claims, and ensure that all applicable waste emissions for each facility are subject to charge, as directed by Congress. However, the EPA decided not to propose such an approach due to the time and resource burden that would be required to administer such a process, for both covered entities and for the EPA. We expect that many types of permitting situations can arise, with many permutations. If industry were required to demonstrate unreasonable delay on a case-by-case basis, the EPA anticipates this review process would result in uncertainty for industry and could lead to a significant backlog, thus making the annual calculation of the WEC unduly burdensome. Therefore, in the interest of simplicity and making the exemption available in an efficient manner and without significant additional burden, the EPA proposes to rely on this threshold of a set period of months, in addition to the three other criteria, which can be more easily applied without detailed investigation. The EPA notes that in its verification process under the proposed approach it would review the submitted documentation to confirm that requirements are met for each facility reporting an unreasonable delay, and facilities determined to have not met the requirements would be required to submit any additional owed WEC obligation and relevant penalties.

Section II.D.1.c. below details the reporting requirements for this exemption which provide information necessary for verification of the exemption eligibility and exempted emission quantities.

We seek comment on these four criteria, each required to be met to determine emissions eligible for the unreasonable delay exemption. We seek comment on the use of responsiveness to requests regarding permitting by the permit applicant or the production segment facility experiencing delayed mitigation as a criterion. We seek comment on the use of 30 days to assess responsiveness where a specific timeframe for response is not provided. We seek comment on the criterion that exempted emissions are those resulting from flaring of gas that would have been mitigated without the permit delay, and that only flaring emissions that are in compliance with applicable regulations are eligible. We seek comment on the appropriate timeframe to be

used as part of the four-factor test proposed today – specifically, what would be the best period of time (even if it is below or above the 30-42-month range EPA is leaning towards now) to use as a trigger for assessing unreasonable delay for the purposes of CAA section 136(f). We seek comment on the proposed use of one timeframe for eligibility versus an approach that might use different time frames for different types of permits. We seek comment on whether specific types of delays should be eligible or ineligible, which could be included as additional criteria or used in place of all or some of the proposed criteria. For example, we seek comment on whether we should establish that delays due to litigation regarding pipeline development are ineligible. We also seek comment on an alternative case-specific approach in which each facility with exempt emissions from unreasonable delay would provide additional facility- and permit-specific information, and in which the exemption would not be granted unless approved by the EPA. Finally, we seek comment on whether EPA should include additional criteria when defining the unreasonable delay exemption. For example, we seek comment on whether, in addition to the four criteria, we should add a criterion that entities show the flaring is necessary (i.e., other options for beneficially use or reinject of gas were infeasible).

b. Calculation of Emissions Resulting From an Unreasonable Delay

Through the provisions proposed at 40 CFR 99.32, the EPA is proposing that exempted emissions are flaring emissions caused by the delay. We are proposing that exempted flaring emissions are the methane emissions (or a subset of the methane emissions) from flaring reported under subpart W.

To calculate the exempted emissions quantity, the entity must determine the time period associated with the emissions that occurred as a result of the delay within the filing year. The EPA is proposing that the delay begins when emissions would have been avoided through the operation of the gathering or transmission infrastructure, not when construction would begin, as in many cases the infrastructure would not be immediately in place and operational at the time of

permitting approval. For example, a permit to construct might be needed before construction begins, and construction could take months or more before the infrastructure would be in place.

Where the exempted emissions cover the entire reporting year, the exempted flaring emissions would be the total reported to part 98 for flare stacks, associated gas flaring, and the portion of offshore methane emissions attributable to flaring. Where exempted emissions occur in only a fraction of a reporting year, the facility is to use data on flaring emissions over that time frame if available, and if unavailable, the facility is to adjust part 98 flaring emissions using the fraction of the year that the exemption is available. Where flared emissions impacted by permitting delay only account for a portion of the total flared emissions, the facility is to adjust their part 98 reported flaring emissions using company records and/or engineering calculations.

We seek comment on the provisions proposed, including the use of reported flaring emissions to determine exempted emissions, the use of part 98 data, and the approaches for quantifying emissions for fractions of the reporting year.

c. Reporting and Recordkeeping Requirements for the Exemption for Emissions Resulting from a Permit Delay

Through the provisions proposed at 40 CFR 99.31, the EPA is proposing that the WEC obligated party receiving the exemption would provide information on each well pad or offshore platform impacted by the delay. This includes the type of permit, permitting authority, and the date that the permit application was complete. The WEC obligated party must report the planned timing of the commencement of the offtake of gas had the permit not been delayed. This includes a listing of the methane emissions mitigation activities that are impacted by the delay and the flaring emissions associated with natural gas that would have been directed to gathering or transmission infrastructure as a result of the methane emissions mitigation activities. This also includes information on all applicable local, state, and Federal regulations regarding flaring emissions and the facility's compliance with each. The WEC obligated party must report the time period associated with the emissions that occurred as a result of the delay within the filing

year. The WEC obligated party must also affirm that neither the production segment entity impacted by the delay nor the gathering or transmission infrastructure entity seeking the permit contributed to the unreasonable delay.

The EPA requires this information for the verification of exemption eligibility and of exempted emission quantity. Reported information will be used to conduct verification as discussed in section III.A.4., and reported information, records and other information as applicable will be used to conduct any auditing that occurs under section III.E.1.

The EPA seeks comment on the reporting and recordkeeping requirements for the exemption for unreasonable delay in environmental permitting. We seek comment on whether additional information should be collected or retained to allow for verification of the quantity of emissions eligible for the exemption.

2. Regulatory Compliance Exemption Under CAA Section 136(f)(6)

CAA section 136(f)(6) 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" upon an Administrator determination that the criteria at CAA section 136(f)(6)(A) have been met. In this action, the EPA is proposing: when the Administrator determinations will be made; the time at which the regulatory compliance exemption would become available to eligible facilities; the process for how the Administrator determinations will be made; how to interpret CAA section 136(f)(6)(A) to govern the interaction between WEC applicable facilities and CAA section 111(b) affected facilities and CAA section 111(d) designated facilities (collectively referred to in this preamble as "CAA section 111(b) and (d) facilities") for the purposes of the regulatory compliance exemption; how "compliance" with the methane emissions requirements promulgated under CAA sections 111(b) and (d) will be defined for the purposes of the regulatory compliance exemption; reporting requirements for the regulatory compliance exemption; and the process for resumption of the

WEC pursuant to CAA section 136(f)(6)(B) if the criteria for the regulatory compliance exemption are no longer met.

The EPA believes the Congressional intent of this exemption was twofold: 1) to be implemented such that the WEC acts as a bridge to full implementation of the Final NSPS OOOOb and EG OOOOc by encouraging methane reductions in the near term while state plans are being developed, and thereafter exempting from the charge facilities that are in compliance with the requirements pursuant to the final NSPS OOOOb and EG-OOOOc-implementing state and Federal plans,[31] and 2) to encourage timely implementation of requirements in the final NSPS OOOOb and EG OOOOc-implementing state and Federal plans in order to ensure that those requirements achieve meaningful emissions reductions. The EPA's proposed approach for implementing the regulatory compliance exemption is based on a plain reading of the statutory text in CAA section 136(f)(6). The EPA strives to create a program that is straightforward to implement and enforce.

The EPA interprets the intent of the WEC to be to incentivize reduction of methane emissions across the oil and gas industry. For industry segments not covered by NSPS OOOOb/EG OOOOc, the WEC incentivizes, but does not require, early and sustained emissions mitigation activity. For WEC applicable facilities in industry segments that are covered by NSPS OOOOb/EG OOOOc, the WEC incentivizes, but does not require, methane emissions reductions

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[31] Under the Tribal Authority Rule (TAR), eligible Tribes may seek approval to implement a plan under CAA section 111(d) in a manner similar to a state. See 40 CFR part 49, subpart A. Tribes may, but are not required to, seek approval for treatment in a manner similar to a state for purposes of developing a Tribal implementation plan (TIP) implementing the EG codified in 40 CFR part 60, subpart OOOOc. The TAR authorizes Tribes to develop and implement their own air quality programs, or portions thereof, under the CAA. However, it does not require Tribes to develop a CAA program. Tribes may implement programs that are most relevant to their air quality needs. If a Tribe does not seek and obtain the authority from the EPA to establish a TIP, the EPA has the authority to establish a Federal CAA section 111(d) plan for designated facilities that are located in areas of Indian country. A Federal plan would apply to all designated facilities located in the areas of Indian country covered by the Federal plan unless and until the EPA approves a TIP applicable to those facilities. In this proposal, all uses of the phrase "state and Federal plans" are intended to include any Tribal plans, to the extent that any Tribal plans are developed to implement EG OOOOc.

earlier than may otherwise be required pursuant to NSPS OOOOb and EG OOOOc-derived state and Federal plans. Once those requirements are in effect, the EPA believes the purpose of the regulatory compliance exemption is to provide relief from the WEC to owners or operators that are fully complying with those requirements, and to broadly encourage compliance. This structure ensures that there is an incentive (or requirement) for methane emission reductions from new and existing sources in place at all times, while also avoiding regulation of the same emissions under both the WEC and the NSPS OOOOb and EG OOOOc-implementing state and Federal plans once the regulatory compliance exemption becomes available.

The EPA expects that, as CAA section 111(b) and (d) facilities implement and comply with the methane emissions requirements of NSPS OOOOb and EG OOOOc-implementing state and Federal plans, many of the WEC applicable facilities that contain those emissions sources subject to NSPS OOOOb and EG OOOOc-derived state and Federal plans would be expected to fall below the waste emissions thresholds, and thus not be subject to the WEC. However, the regulatory compliance exemption recognizes that certain WEC applicable facilities may remain above the waste emissions thresholds even after implementation of the requirements in the final NSPS OOOOb and approved state and Federal plans under EG OOOOc; the regulatory compliance exemption would shield such owners or operators that are in compliance with those requirements from additional regulation under the WEC.

Congress provided that the regulatory compliance exemption would only come into effect after "(i) 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 "(ii) compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by [the NSPS OOOOb/EG OOOOc 2021 Proposal], if such rule had been finalized and implemented." The EPA's understanding of these provisions is that Congress intended to provide an incentive for states to move promptly in adopting their plans, and to encourage those plans to achieve meaningful emissions reductions.

These two drivers are manifested in the Administrator determinations that must be made before the regulatory compliance exemption becomes available: the first Administrator determination, per CAA section 136(f)(6)(A)(i), that the final NSPS OOOOb and all EG OOOOc-implementing state and Federal plans are "approved and in effect"; and the second Administrator determination, per section 136(f)(6)(A)(ii), that the emissions reductions achieved by these requirements are equal to or greater than the reductions that would have been achieved by the NSPS OOOOb/EG OOOOc 2021 Proposal, had that rule been finalized and implemented as proposed (the "equivalency determination"). These requirements mean that if the final NSPS OOOOb or EG OOOOc-implementing state or Federal plans are delayed, or the requirements therein are collectively less stringent than those in the NSPS OOOOb/EG OOOOc 2021 Proposal, the exemption would not be available and WEC applicable facilities that exceed the waste emissions threshold would not be eligible for the regulatory compliance exemption from the WEC until the conditions are met.

Here, we summarize the proposed approach for the regulatory compliance exemption. Elements of the proposal, other options considered, and requests for comment are discussed in more detail in the sections below.

The EPA is proposing that the prerequisite Administrator determinations for the regulatory compliance exemption would be made after all state and Federal plans pursuant to CAA section 111(d) are approved and in effect. Separate from the timing of the Administrator determinations, the WEC program must establish when the regulatory compliance exemption becomes available at the facility level (*i.e.*, when eligible facilities can be exempted from the WEC), by defining when WEC applicable facilities that are subject to methane emissions requirements pursuant to NSPS OOOOb and EG OOOOc-implementing state and federal plans are in compliance with those requirements. The EPA believes that the regulatory compliance exemption is intended to provide relief from the WEC when the requirements in the final NSPS OOOOb and EG OOOOc-implementing state and Federal plans are in effect in all states. In this

interest, the EPA is proposing that WEC applicable facilities would be eligible for the regulatory compliance exemption as soon as the Administrator determinations have been made, rather than when the applicable requirements in state and Federal plans are fully implemented. Thus, under the EPA's proposed approach, the regulatory compliance exemption would become available to facilities as soon as the Administrator determinations are made under CAA section 136(f)(6)(A)(i) and (ii).

The EPA is also proposing further elements of the process for the Administrator determinations under CAA section 136(f)(6)(A)(i) and (ii), including establishing the relative points of comparison for the equivalency determination, in order to ensure that those elements align with the statutory requirements. Because the Administrator determinations cannot be made until all plans are approved and in effect, and because the timing for both Administrator determinations is aligned, the EPA proposes that two the determinations be made together via a single future administrative action.

The EPA is proposing that a WEC applicable facility's eligibility for the regulatory compliance exemption would be based on the compliance status of all of the CAA section 111(b) and (d) facilities contained within that WEC applicable facility. To be eligible for the exemption, the EPA proposes that all of the regulated emissions sources must be in full compliance with their respective methane emissions requirements under the NSPS and EG-implementing state and Federal plans.

The EPA is also proposing reporting requirements for the regulatory compliance exemption. In order to reduce the burden on industry, the EPA proposes that only WEC applicable facilities that are eligible for the exemption would be required to report all associated data elements. Finally, the EPA is proposing how access to the regulatory compliance exemption would be removed for all WEC applicable facilities if the criteria associated with the Administrator determinations were no longer met. The EPA's proposed approach for removing

access to the exemption mirrors the conditions that must be met in order for it to become available.

a. Timing for Regulatory Compliance Determinations

Before the regulatory compliance exemption becomes available to facilities, CAA section 136(f)(6)(A) requires determinations to be made by the Administrator that (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) that "compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by the [NSPS OOOOb/EG OOOOc 2021 Proposal], if such rule had been finalized and implemented." The EPA believes that Congress intended these prerequisites to exemption availability to encourage timely implementation of the requirements in the final NSPS and state and Federal plans and to ensure that those requirements achieve meaningful emissions reductions.

The first Administrator determination is related to the timing of final methane emissions standards under CAA section 111(b) and state and Federal plans pursuant to an EG issued under CAA section 111(d). The EPA proposes to interpret the language in CAA section 136(f)(6)(A)(i) to mean that this temporal requirement is only met when ***both*** (1) emission standards for new sources under CAA section 111(b) are promulgated and in effect and (2) all state plans for existing sources pursuant to an EG issued under CAA section 111(d) have been approved by the EPA and are in effect. As to the latter element, the EPA also proposes to interpret the reference to "plans pursuant to subsection... (d) of section 111" to include the promulgation of a Federal plan where the EPA determines that one or more states have failed to submit an approvable state plan, as that is the only way a plan pursuant to CAA section 111(d) would take effect in those states. The EPA further proposes to interpret "all states" in CAA section 136(f)(6)(A)(i) to mean that every state with an applicable facility (*i.e.*, all states with subpart W facilities containing CAA section 111(b) or (d) facilities) must have an approved plan (state or Federal) before the

determination can be made. Accordingly, because the emissions standards for new sources under CAA section 111(b) will be finalized before the submittal of state plans for existing sources under CAA section 111(d), approval of the final state (or Federal) plan for states with designated facilities would determine the timing for when the determination could be made under the proposed approach. The EPA proposes that this determination would be made after all CAA section 111(d) plans (*i.e.*, state or Federal plans) have been approved and are in effect. The EPA believes that the proposed approach and interpretation of "all states" is aligned with a plain reading of the statutory text. In particular, the EPA notes the relationship between the use of the singular in section 136(f)(6)(A), directing the EPA to make "a determination", and the requirements outlined in 136(f)(6)(A)(ii) and (ii), providing that this determination is dependent on EPA finding that (1) standards and plans "have been approved and are in effect in all states" and that (2) compliance with the standards and plans "will result in equivalent or greater emissions reductions as would be achieved by the [2021] proposed rule…"[32] The text strongly indicates that the EPA must make *one* determination after all standards and plans are in place in all states in order to make the exemption available, and further that the determination cannot be made until standards and plans are in place in all states because the equivalency determination must be made on a nationwide scale.[33]

The EPA considered an alternative approach for the determination that methane emissions standards and plans have been approved and are in effect in all states. This alternative would involve a determination for methane emissions standards after the promulgation of final emissions standards for CAA section 111(b) facilities and then determinations on a state-by-state basis as each state plan containing emissions standards for CAA section 111(d) facilities were

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[32] 42 U.S.C. 7436(f)(6)(A).

[33] Note that while the EPA believes that the statute instructs us to make a determination after the plans are collectively in place (rather than making multiple state-by-state determinations), that does not preclude the EPA from reviewing and revising the determination if a standard or plan is later revised, to ensure that the conditions of section 136(f)(6)(A) are still met, consistent with the resumption of charge language in section 136(f)(6)(B).

submitted and approved by the EPA (or a Federal plan was promulgated where a state did not submit an approvable plan). The EPA believes that this state-by-state approach is inconsistent with a plain reading of CAA section 136(f)(6)(A)(i), which mandates that emissions standards and plans must be approved and in effect in *all* states with respect to the applicable facilities (*i.e.*, all states with subpart W facilities containing CAA section 111(b) or (d) facilities). The EPA requests comment on the proposed approach and an alternative approach that would make determinations on a state-by-state basis as each state plan was approved.

The second determination that must be made before the regulatory compliance exemption becomes available is whether the final "methane emissions standards and plans" provide equivalent or greater emissions reductions than would have been achieved by the NSPS OOOOb/EG OOOOc 2021 Proposal, had that proposal been finalized and implemented as proposed. Based on a plain reading of the statutory text, because plans pursuant to CAA section 111(d) will not be finalized for several years, the EPA cannot propose an equivalency determination in this action. Instead, we propose that the equivalency determination will be made via an administrative action after all CAA section 111(d) plans (*i.e.*, state or Federal plans) have been approved. This proposed timing would allow evaluation of the emissions reductions achieved by the final NSPS and by all final state and Federal plans.

The EPA also assessed making the equivalency determination for CAA section 111(b) affected facilities before making it for CAA section 111(d) designated facilities. In this proposal, the EPA interprets CAA section 136(f)(6)(ii) as requiring a comparison of the emissions reductions that will be achieved by the final NSPS OOOOb/EG OOOOc and the reductions that would have been achieved by the NSPS OOOOb/EG OOOOc 2021 Proposal if finalized as proposed. Separate equivalency determinations for CAA section 111(b) facilities and CAA section 111(d) facilities would not provide for a comparison of the total emissions reductions achieved by both rules, and therefore the EPA believes that an approach with separate equivalency determinations would be inconsistent with a plain reading of the statutory text.

Further, because both determinations must occur before the exemption becomes available, and because under the proposed approach the determination required by CAA section 136(f)(6)(i) would occur after all plans are approved and in effect, there would be no practical reason for making the equivalency determination for CAA section 111(b) facilities before making it for CAA section 111(d) facilities. Finally, the only purpose for making the equivalency determination for CAA section 111(b) facilities before CAA section 111(d) facilities would be in support of an approach that would make the regulatory compliance exemption available to CAA section 111(b) facilities before CAA section 111(d) facilities. As discussed below in section II.D.2.b of this preamble, such an approach would not align with other elements of this proposal, would not be aligned with the statutory text, and would not be technically feasible. The EPA requests comment on this alternative approach.

b. Timing of Regulatory Compliance Exemption Availability

Separate from the timing of the Administrator determinations, the WEC program must also establish when the regulatory compliance exemption will become available for facilities. Different states will have different start dates and in some cases, phased-in requirements, in state or federal plans under 111(d), resulting in some facilities being in compliance with the methane emissions requirements pursuant to CAA section 111(b) and (d) before others. The EPA believes the inclusion of the regulatory compliance exemption at CAA section 136(f)(6)allows for relief from the WEC when the requirements in the final NSPS and state and Federal plans are in effect. The EPA therefore proposes that the regulatory compliance exemption would become available to all applicable facilities meeting the criteria when the Administrator determinations required by CAA section 136(f)(6)(A)(i) and (ii) have both been made. Both determinations are required before the exemption becomes available, and the determination under CAA section 136(f)(6)(A)(i) would indicate that the requirements promulgated under CAA sections 111(b) and (d) have been approved and are in effect. Because the availability of the exemption is linked to the CAA section 136(f)(6)(A)(i) and (ii) determinations, which the EPA is proposing could

only be made after all states with an applicable facility have an approved state or Federal plan in effect, the EPA is proposing that the exemption would become available to all eligible WEC applicable facilities in all states at the same time. Moreover, because methane emissions standards for CAA section 111(b) facilities would be expected to come into effect earlier than those required for CAA section 111(d) facilities in state or Federal plans, the timing for exemption availability would be largely driven by the approval and effective date for the final state or Federal plan (i.e., the last state with CAA section 111(d) facilities to have a plan approved and in effect).

The EPA believes the proposed approach is consistent with the statutory text. CAA section 136(f)(6)(A) states that charges shall not be imposed on an applicable facility "that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111." In order to receive the exemption, all CAA section 111(b) and (d) facilities contained within a WEC applicable facility would need to demonstrate compliance, as discussed in section II.D.2.f. of this preamble.

This proposal makes the exemption available upon adoption of all plans pursuant to CAA section 111(d) and the issuance of the Administrator's findings under CAA section 136(f)(6)(A). The EPA proposes that the exemption be available as soon as all state or federal plans are in effect, because facilities can be in compliance with the requirements in plan even if full implementation of those requirements is not required until a future date. Provided that facilities subject to the WEC are in compliance with OOOOb requirements and the requirements in EG OOOOc-implementing plans, the proposed approach also allows such facilities to benefit from the regulatory compliance exemption much earlier than the alternative, described below, of making the regulatory compliance exemption available only once applicable compliance deadlines have passed.

The EPA notes that implementation of the requirements included in state or Federal plans may not be mandated immediately upon the date at which the plan goes into effect. In other

words, the plans may include compliance schedules with compliance dates that occur at a future date after plan approval, and such requirements could be implemented over multiple compliance dates in a phased manner or include deadlines for various increments of progress. It is therefore possible for CAA section 111(d) facilities to be in compliance with the methane emissions requirements in a plan even if not all compliance dates included in the plan have come to pass. For example, if an approved state plan were to require a specific type of designated facilities to install emissions controls within a year of the effective date of the state plan, those facilities would be considered in compliance with those requirements for that first year. By providing the exemption as soon as the Administrator's determinations are made after state or Federal plans are approved and in effect rather than when the requirements in those plans must be implemented, the proposed approach would provide relief from the WEC once CAA section 111(d) facilities are effectively subject to federally enforceable methane emissions requirements pursuant to CAA section 111. The EPA requests comment on the proposed approach of making the regulatory compliance exemption available to all WEC applicable facilities at the time when the two determinations required by CAA section 136(f)(6)(A) have been made.

The EPA considered alternative approaches in developing this proposal for implementing the regulatory compliance exemption but found they would not be consistent with the statutory text, would be more challenging to implement, would unfairly advantage specific facilities and companies, or would not be technically feasible.

First, the EPA considered an approach that would make the exemption available to WEC applicable facilities meeting the criteria at a state-by-state level as the plan pursuant to CAA section 111(d) for each state was approved and became effective. For WEC applicable facilities that span multiple states, the exemption would be available when plans for all states in which the facility is located were approved and in effect. This alternative approach would likely make the exemption available earlier for certain WEC applicable facilities compared to the proposed approach, which would not make the exemption available until plans are approved and in effect

in all states. The EPA believes that making the regulatory compliance available at a state-by-state level is inconsistent with the statutory text. As discussed in section II.D.2.a. of this preamble, the EPA's interpretation of CAA section 136(f)(6)(A) in this proposal is that neither of the determinations that are prerequisites to the regulatory compliance exemption's availability could be made until plans for CAA section 111(d) facilities have been approved and are in effect for all states. Based on this interpretation, it would not be possible for the exemption to become available on a state-by-state basis as state plans were approved and became effective because the prerequisite determinations could not occur until all state plans were approved and in effect. The EPA also believes the proposed approach will simplify implementation and administration of the regulatory compliance exemption compared to an approach in which the exemption would become available to states at different times. Further, a state-by-state application of the exemption could unfairly advantage and disadvantage WEC applicability facilities or companies based on their geographic location. WEC obligations for operations in states that take longer to develop state plans could be higher than those in states that are able to develop and have plans approved earlier, and thus have access to the exemption. Conversely, the proposed approach of making the exemption available to all states at the same time would be equitable and provide the industry with better regulatory certainty. The EPA requests comment on making the regulatory compliance exemption available on a state-by-state basis based on the finalization of plans for individual states.

Second, the EPA considered an approach that would make the regulatory compliance exemption available to WEC applicable facilities meeting the criteria when the methane requirements for all CAA section 111(b) and (d) facilities have been fully implemented. Under this alternative approach, WEC applicable facilities would only become eligible for the regularly compliance exemption once the compliance dates for the NSPS and the state and Federal plans have passed. Because the compliance deadlines under the final EG OOOOc may occur at some point *after* the timeline for state plan approval and issuance of a Federal plan, this alternative

approach would make the regulatory compliance exemption available later than under the proposed approach. This would require the EPA to interpret the phrase "subject to and in compliance with methane emissions requirements" in CAA section 136(f)(A) to mean that the exemption from the charge is available only after all of the requirements for CAA section 111(d) facilities have been fully implemented. In other words, the EPA would read "in compliance with methane emissions requirements" to mean that *all* compliance dates in the NSPS and the state and Federal plans have passed. That might serve to give independent effect to both elements of the statutory phrase "subject to and in compliance with", but the EPA believes that this alternative approach is not as well aligned with the statutory directive. This is because compliance with the standards may occur at different points in time, both across the NSPS and the state and Federal plans, and even within standards that have phased compliance requirements. This interpretation may have the result of delaying availability of the regulatory compliance exemption for many years, even as facilities are otherwise complying with all *applicable* methane emissions requirements, thus extending the period for which many oil and gas operations would be subject to concurrent regulation under WEC and CAA section 111. Rather, the EPA proposes to conclude that CAA section 111(b) and (d) facilities can be considered to be in compliance with all applicable methane emissions requirements, even prior to the final compliance deadlines, for purposes of the regulatory compliance exemption. While the EPA is not proposing that the exemption would become available when the requirements of all state and Federal plans are fully implemented rather than when all state and Federal plans have been approved and are in effect, the agency requests comment on whether such an approach would be legally and practically justified.

Third, the EPA considered an approach that would make the regulatory compliance exemption available to WEC applicable facilities meeting the criteria at a state-by-state level as the final compliance deadline in a state or Federal plan for CAA section 111(d) facilities was reached. Under this alternative approach, WEC applicable facilities in a given state would have

access to the exemption upon the final compliance date for CAA section 111(d) facilities in that state. Because state and Federal plans may establish different compliance timelines for CAA section 111(d) facilities, this approach could make the exemption available to states at different times. For WEC applicable facilities that span multiple states, the exemption would be available when the final compliance date passed in all states in which the facility is located. As with the alternative approach that would make the exemption available after the final compliance deadline for CAA section 111(d) facilities had passed in all states, the EPA does not believe an approach that provides the exemption at a state-by-state level based on compliance dates is as consistent with the statutory text and purpose of the exemption for the reasons discussed in the prior paragraph. The EPA requests comment on an approach that would make the exemption available at a state-by-state level based on each state's final compliance deadline for CAA section 111(d) facilities.

The EPA also assessed an approach that would make the regulatory compliance exemption available to CAA section 111(b) facilities before CAA section 111(d) facilities. Because compliance with emission standards for CAA section 111(b) affected facilities generally apply upon the effective date of the final NSPS and would be required before emission standards for CAA section 111(d) designated facilities are fully implemented (once state or Federal plans are finalized and in effect), there would likely be several years between compliance with methane emissions requirements for CAA section 111(b) and (d) facilities. The EPA rejected this approach for this proposal, however, based on a plain reading of the statutory text. First, as discussed in section II.D.2.e. of this preamble, the exemption is applied to an entire WEC applicable facility, not the CAA section 111(b) and (d) facilities within that WEC applicable facility, and therefore individual CAA section 111(b) or (d) facilities within a WEC applicable facility cannot be exempted. Second, CAA section 136(f)(6)(A) states that waste emission charges shall not be imposed "on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) *and* (d) of section 111." The EPA

believes that a plain reading of this text indicates that compliance with regulations pursuant to both CAA section 111(b) and (d) must be achieved before the exemption becomes available, and that the statute therefore does not, by its terms, permit application of the exemption to CAA section 111(b) facilities before it becomes available to CAA section 111(d) facilities. As discussed in section II.D.2.a. of this preamble, the EPA proposes to make the determinations required by CAA section 136(f)(6)(A)(i) and (ii) after all state or Federal plans have been approved and are in effect. Because the determinations that are required for the exemption to become available would not be made separately for CAA section 111(b) facilities and CAA section 111(d) facilities, the exemption would not be available to CAA section 111(b) facilities before CAA section 111(d) facilities under the proposed approach.

Further, even assuming that this statutory text allowed for some ambiguity, there are practical limitations to implementing the regulatory exemption in a phased manner for CAA section 111(b) and (d) facilities. The WEC calculations are based on methane emissions and natural gas or oil throughput data for subpart W facilities that may contain both CAA section 111(b) and (d) facilities. Because reporting under subpart W does not distinguish between CAA section 111(b) and (d) facilities, there is currently no practical means of implementing a phased implementation of the regulatory compliance exemption. Revising the subpart W reporting requirements to make such distinctions would significantly increase the reporting complexity and burden for the oil and gas industry and would not be possible for certain emissions sources due to different definitions of individual emissions source types in subpart W and at CAA section 111(b) and (d) facilities. Further, while it may be feasible to distinguish emissions from new and existing sources for certain emission source categories, there is no means to distinguish natural gas throughput from CAA section 111(b) and (d) facilities at subpart W facilities that contain both CAA section 111(b) and (d) facilities.

c. Emissions Year in Which Exemption Takes Effect

While the data collected under subpart W for the purposes of WEC calculation are reported on a calendar-year basis (*i.e.*, a reporting year is a calendar year), the date at which all of the criteria for the regulatory compliance exemption will be met is not yet known and could fall at any point in the course of a reporting year. The EPA is proposing that the regulatory exemption will take effect in the reporting year in which the required conditions are met. For example, if all exemption requirements are met in June 2027, all eligible facilities meeting the proposed compliance requirements discussed in section II.D.2.f. of this preamble would be exempt from the WEC for the entire 2027 reporting year. The proposed approach is aligned with the EPA's interpretation that the regulatory compliance exemption is intended to prevent WEC applicable facilities from being subject to the WEC when their constituent CAA section 111(b) and (d) facilities are in compliance with their applicable standards. The EPA requests comment on the proposed approach, as well as an approach in which the regulatory compliance exemption became effective for eligible facilities in the next calendar year after which all required conditions are met (*e.g.*, if requirements are met in October 2027, the exemption would come into effect for the 2028 reporting year). The EPA also requests comment on an approach that would apply the regulatory exemption for a portion of the reporting year based on when all exemption requirements were met, and how reported emissions and throughput data could be quantified, such as through prorating.

d. Approach for Regulatory Compliance Determinations

In this action, the EPA is proposing certain elements related to the approach for the CAA section 136(f)(6)(A) Administrator determinations that must occur before the regulatory compliance exemption becomes available. The EPA is proposing that both determinations would be made simultaneously via a future administrative action. For the equivalency determination, the EPA is proposing the geographic scale at which the equivalency determination would be conducted and the specific elements that would be compared. The EPA proposes to address all

other elements (e.g., cumulative versus year-by-year) of the equivalency determination in a future administrative action when the analysis is conducted.

The EPA proposes that when the criteria for both determinations are met, the determinations would be made through a single administrative action. As discussed in section II.D.2.a. of this preamble, under the proposed approach neither determination could be made until all state and Federal plans pursuant to CAA section 111(d) have been approved and are in effect. Because the timing for both determinations would be aligned, the EPA believes that making both determinations via a single administrative action will facilitate timely access to the regulatory compliance exemption after the CAA section 136(f)(6)(A)(i) and (ii) requirements have been met. The EPA requests comment on the proposed approach for making both determinations via a single future administrative action, as well as on alternative approaches for making the determinations.

Section 136(f)(6)(A)(ii) of the CAA requires an Administrator determination that compliance with the requirements in the final CAA section 111(b) and (d) rules "will result in equivalent or greater emissions reductions as would be achieved by the [NSPS OOOOb/EG OOOOc 2021 Proposal], if such rule had been finalized and implemented." The EPA is proposing to conduct the analysis for the purposes of this equivalency determination at a national level, comparing the national-level emissions reductions that would have been achieved under the NSPS OOOOb/EG OOOOc 2021 Proposal (if finalized as proposed) against those that will be achieved upon implementation of the final NSPS OOOOb/EG OOOOc.

The EPA believes that a national evaluation is the most appropriate geographic scale for the purposes of the equivalency determination. The primary concern for the emissions reductions achieved by the NSPS OOOOb/EG OOOOc in the context of the WEC regulatory compliance exemption are methane emissions. Because the climate impacts of these emissions are dependent on their aggregate quantity rather than where they occur, a national-level evaluation will provide an appropriate comparison of the overall impact of the reductions that would have been achieved

under the NSPS OOOOb/EG OOOOc 2021 Proposal and those that will be achieved upon implementation of the final NSPS OOOOb and state and Federal plans implementing OOOOc. The EPA also considers a national evaluation to be consistent with the statutory text in CAA section 136(f)(6)(A)(ii), which requires the Administrator's determination to be based on "compliance with the requirements described in clause (i)," where clause (i) describes the collective "methane emissions standards and plans" required by CAA sections 111(b) and (d).

The EPA assessed alternative approaches that would conduct the equivalency determination at the state-by-state level (*i.e.*, each state would need to demonstrate equivalent or greater emissions reductions) and at both the national and state-by-state levels. However, the EPA is not proposing an approach that would conduct the equivalency at the state-by-state level because the EPA believes that this approach is less consistent with the statutory text and purpose. Determinations for individual states would not indicate if the emissions reductions that will be achieved by the final NSPS and state and Federal plans are equivalent or greater than the reductions that would have been achieved by the NSPS OOOOb/EG OOOOc 2021 Proposal, had that rule been finalized and implemented. In other words, if the EPA were to make determinations for individual states and make the exemption available on a state-by-state basis, that could result in not achieving emission reductions equivalent to the NSPS OOOOb/EG OOOOc 2021 Proposal, thus undermining Congress' intent in drafting this provision to incentivize a minimum level of methane emission reductions via the CAA section 111(b) and (d) regulations. The EPA requests comment on the proposed approach of conducting the equivalency determination at the national scale. The EPA requests comment on conducting the equivalency determination at other geographic scales, such as a state-by-state level, as well as an approach that would require an equivalency determination at both the national and state-by-state levels.

The EPA also considered an alternative approach that would conduct the equivalency analysis at a source-by-source level (at either a national or state-by-state scale). Under this

alternative approach, the EPA would compare the reductions achieved by individual sources under the NSPS OOOOb /EG OOOOc 2021 Proposal, had that rule be finalized and implemented, and the final NSPS OOOOb/EG OOOOc. As described above, the climate impacts of methane emissions are based on their aggregate quantity, and it is that quantity, therefore, that is necessary for conducting the equivalency determination. Within the specific context of the equivalency determination, it does not matter if the emissions reductions achieved by an individual source under the final NSPS OOOOb/EG OOOOc achieves fewer reductions than it would have under the NSPS OOOOb /EG OOOOc 2021 Proposal, as long as the total emissions reductions achieved by implementation of the final NSPS OOOOb and EG OOOOc-derived state or federal plans across all sources are equivalent or greater than those that would have been achieved across all sources by the NSPS OOOOb /EG OOOOc 2021 Proposal. The EPA therefore believes that it is not reasonable to conduct the equivalency analysis on a source-by-source level and such an approach is not required by the statutory text. However, the EPA requests comment on using a source-by-source approach for the equivalency determination and requests comment on how such an analysis could be conducted.

Because the NSPS OOOOb/EG OOOOc 2021 Proposal was not itself a final rule at the time Congress enacted this Waste Emissions Charge program, no new source emissions standards or emission guidelines had been finalized for CAA section 111(b) and (d) facilities based on the NSPS OOOOb/EG OOOOc 2021 Proposal, no requirements had been finalized for what constitutes an approvable state plan, and no states had submitted state plans pursuant to such hypothetical finalized requirements. As such, the EPA proposes to use the standards proposed in NSPS OOOOb and the presumptive standards proposed in EG OOOOc as the basis for evaluating emissions reductions that would have been achieved had the NSPS OOOOb/EG OOOOc 2021 Proposal been finalized and implemented. In other words, the EPA understands the inclusion of the NSPS OOOOb/EG OOOOc 2021 Proposal as the baseline for the equivalency demonstration to mean that Congress intended for the EPA to assume, for purposes

of this analysis, that the proposed standards were finalized as drafted in the NSPS OOOOb/EG OOOOc 2021 Proposal and implemented nationwide. Further, because Congress directs the EPA to compare the emissions that would have been achieved if the NSPS OOOOb/EG OOOOc 2021 Proposal were finalized and implemented against actual CAA section 111(b) and (d) standards once these are finalized and in effect, the EPA believes that Congress must have meant the EPA to assume that the NSPS OOOOb/EG OOOOc 2021 Proposal was finalized and implemented *as proposed*, which is the only way to use it as a point of comparison. Accordingly, for CAA section 111(b) facilities under the NSPS OOOOb/EG OOOOc 2021 Proposal, the EPA proposes to assess the reductions that would have been achieved had the proposed NSPS OOOOb been finalized and implemented. For CAA section 111(d) facilities under the NSPS OOOOb/EG OOOOc 2021 Proposal, the EPA proposes to assess the reductions that would have been achieved had the proposed emissions guidelines been adopted and implemented by all states as proposed.

The EPA believes the proposed points of comparison between the NSPS OOOOb/EG OOOOc 2021 Proposal and the final NSPS OOOOb and final requirements in state and Federal plans derived from EG OOOOc for the equivalency is aligned with a plain reading of CAA section 136(f)(6)(A), and with Congressional intent. The EPA requests comment on the proposed approach. The EPA recognizes that if the NSPS OOOOb/EG OOOOc 2021 Proposal had been finalized as proposed, the requirements for CAA section 111(d) facilities, and the emissions reductions associated with those requirements, would have been based on approved state or Federal plans. In those plans, it is possible that some states may have set different standards of performance than the presumptive standards proposed in EG OOOOc based on a provision of CAA section 111(d)(1) permitting states to "take into consideration, among other factors, the remaining useful life of a source." (The EPA refers to this provision as the "remaining useful life and other factors" provision, or RULOF.) The EPA regulations at 40 CFR part 60 subpart Ba permit states to consider several factors to, with an adequate demonstration, establish standards

less stringent than the degree of emission limitation otherwise required by an EG. In such circumstances, the emissions reductions achieved by those state plans would have been less than if the state plans had adopted and implemented the presumptive standards in the final emissions guidelines, had they been finalized. However, because state plans were never developed pursuant to the NSPS OOOOb/EG OOOOc 2021 Proposal, there is no means of reasonably estimating the requirements that may have been included in those state plans and what emissions reductions they would have achieved. The text also counsels against making RULOF assumptions in this case. Because Congress directs the EPA to compare the emissions that would have been achieved if the NSPS OOOOb/EG OOOOc 2021 Proposal were "finalized and implemented" against actual CAA section 111(b) and (d) standards once these are "approved and in effect," the EPA believes that Congress meant the Agency to assume that the NSPS OOOOb/EG OOOOc 2021 Proposal was finalized and implemented *as proposed*, because that will allow for comparison with emissions reductions achieved under the final CAA section 111(d) plans, which may differ from the proposal in a variety of ways, including as a result of RULOF analysis. It is also reasonable to infer that Congress wanted to guarantee the level of reductions (i.e., "equivalent or greater"[34] than expected by the NSPS OOOOb/EG OOOOc 2021 Proposal) that would ultimately be achieved by the final NSPS OOOOb and EG OOOOc-derived state and Federal plans by only allowing for the exemption if it is determined that the Final NSPS OOOOb/EG OOOOc would achieve at least the level of reductions that were expected from the proposed rule in place at the time CAA section 136 was written and passed. Thus, the EPA believes the intent of CAA section 136(f)(6)(A) is to use the proposed approach of assessing the reductions that would have been achieved had the proposed emissions guidelines in the NSPS OOOOb/EG OOOOc 2021 Proposal been adopted *and* implemented by all states as proposed. The EPA requests comment on other approaches that could be used to estimate the emissions

[34] 42 U.S.C. 7436(f)(A)(ii) (requiring a determination by the Administrator that "compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by [the 2021 proposal]".)

reductions from CAA section 111(d) facilities had the NSPS OOOOb/EG OOOOc 2021 Proposal been finalized and implemented.

The EPA also recognizes that in the proposed approach for the equivalency determination, analysis of the reductions from CAA section 111(d) facilities under the NSPS OOOOb/EG OOOOc 2021 Proposal would be based on universal adoption of the presumptive standards in the proposed emissions guidelines, while analysis of the reductions achieved by state and Federal plans developed pursuant to the final EG OOOOc would account for any states' use of the RULOF provision to set less stringent standards. The EPA believes the proposed approach of assessing the reductions achieved by final state and Federal plans is aligned with the statutory text and Congressional intent. CAA section 136(f)(6)(A)(ii) states that the point of comparison for the emissions reductions that would have been achieved by the NSPS OOOOb/EG OOOOc 2021 Proposal are those resulting from "compliance with the requirements described in clause (i)." CAA section 136(f)(6)(A)(i) in turn refers to the "methane emissions standards and *plans* pursuant to subsections (b) and (d) of section 111." The EPA's proposed approach to use the reductions that will be achieved by approved state and Federal plans in the equivalency determination is based on the use of "plans" in CAA section 136(f)(6)(A)(i). Further, CAA section 136(f)(6)(A)(ii) establishes that EPA may not make the equivalency determination unless and until it can establish that "compliance with the requirements described in clause (i) *will result in equivalent or greater emissions reductions* as would be achieved by the [NSPS OOOOb/EG OOOOc 2021 Proposal]."[35] As similarly noted above, it is reasonable to infer from this language that Congress intended to guarantee that a minimum level of emissions reduction would be achieved by implementation of the CAA section 111 standards before the exemption became available – and because application of the RULOF provision may result in less stringent standards, Congress could not guarantee this minimum level would be achieved unless the equivalency determination considered the reductions actually achieved by the final

[35] 42 U.S.C. 7436(f)(6)(A)(ii) (emphasis added).

NSPS and the standards actually set in state plans, including any standards set pursuant to the RULOF provision.

The EPA considered an approach which would compare the NSPS OOOOb/EG OOOOc 2021 Proposal, as proposed, with the final NSPS OOOOb/EG OOOOc as finalized but before implementation and consideration of RULOF, but ultimately rejected this approach. Although this approach would be relatively simple to apply, not taking into account the actual standards adopted in the state plans cannot lead to a sound conclusion about whether the emission reduction target that the statute sets will actually be met in practice. In other words, this approach could not guarantee that the "result" of implementation of the plans will be equivalent reductions, as the statute requires the EPA to determine. Further, CAA section 136(f)(6)(A)(ii) states that "compliance" with the standards should result in equivalent emissions reductions, but in practice, sources are not required to comply with the EG; instead, sources must comply with standards later established in state or federal plans. For these reasons, the EPA believes that comparing the NSPS OOOOb/EG OOOOc 2021 Proposal with the final NSPS OOOOb/EG OOOOc as finalized, but before implementation, is not as well aligned with the statutory text and intent of Congress. The EPA requests comment on its proposed approach and other approaches that could be used to estimate the emissions reductions that will be achieved by plans pursuant to CAA section 111(d), including comparing the NSPS OOOOb/EG OOOOc 2021 Proposal with the final NSPS OOOOb/EG OOOOc before implementation and consideration of RULOF.

The EPA reviewed comments on this topic submitted in response to the NSPS OOOOb/EG OOOOc 2022 Supplemental Proposal. Those comments informed the EPA's proposed approach and alternative approaches. While those comments were considered in the development of this proposal, because they were submitted in response to a separate rulemaking, any duplicative or additional comments on this topic must resubmitted in response to this proposal in order to be considered in the development of the final WEC rule.

e. Application of the Regulatory Compliance Exemption to Subpart W Facilities

CAA section 136(f)(6)(A) states: "[c]harges shall not be imposed pursuant to subsection (c) on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111" upon an Administrator determination that "(i) 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 (ii) compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by the" NSPS OOOOb/EG OOOOc 2021 Proposal.

The EPA notes that an applicable facility in CAA section 136(d) is an entire site or collection of sites, each of which contains individual emissions sources. In contrast, the terms "affected facility"[36] and "designated facility"[37] are used by the EPA in the NSPS and EG regulations, respectively, to refer to an individual emissions source or a group of emissions sources at a site (*e.g.*, a storage tank battery or a collection of pneumatic controllers) to which a standard applies. A single subpart W facility may contain hundreds or thousands of CAA section 111(b) and (d) facilities. The EPA proposes to interpret and implement the regulatory compliance exemption such that an applicable subpart W facility that contains any CAA section 111(b) or (d) facilities would be eligible for the exemption once all other criteria are met (*i.e.*, the Administrator determinations and proposed compliance elements in 40 CFR 99.40). Table 3 shows the subpart W industry segments applicable to the WEC that may contain CAA section 111(b) or (d) facilities. WEC applicable facilities in the offshore production, LNG storage, LNG import and export, and transmission pipeline industry segments do not contain CAA section 111(b) or (d) facilities under the Crude Oil & Natural Gas source category (or any other source category in 40 CFR part 60) and would not be eligible for the regulatory compliance exemption.

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[36] "Affected facility" is defined for purposes of an NSPS at 40 CFR 60.2 to mean "with reference to a stationary source, any apparatus to which a standard is applicable."

[37] "Designated facility" is defined for purposes of an EG at 40 CFR 60.21a to mean "any existing facility. . . which emits a designated pollutant and which would be subject to a standard of performance for that pollutant if the existing facility were an affected facility."

The EPA proposes that if any future NSPS/EG rules are finalized such that additional industry segments contain CAA section 111(b) or (d) facilities, the WEC applicable facilities in those segments would be eligible for the regulatory compliance exemption.

**Table 3. Subpart W Industry Segment and CAA Section 111(b) and (d) Facility Overlap**

| **Subpart W Industry Segment Subject to WEC** | **May contain CAA Section 111(b) and/or (d) Facilities?** |
|---|---|
| Onshore petroleum and natural gas production | Yes |
| Offshore petroleum and natural gas production | No |
| Onshore petroleum and natural gas gathering and boosting | Yes |
| Onshore natural gas processing | Yes |
| Onshore natural gas transmission compression | Yes |
| Onshore natural gas transmission pipeline | No |
| Underground natural gas storage | Yes |
| LNG import and export equipment | No |
| LNG storage | No |

The EPA assessed other potential interpretations of the regulatory compliance exemption while developing the proposed approach. In particular, the EPA assessed an approach that would instead only exempt the emissions from individual CAA section 111(b) and (d) sources, rather than the emissions of the entire subpart W facility. For example, if certain pneumatic devices are regulated under NSPS OOOOb/EG OOOOc pursuant to CAA sections 111(b) and (d), all reported pneumatic device methane emissions from a subpart W facility would be subtracted from that facility's reported emissions. Under this approach, only emission sources at subpart W facilities that are not also CAA section 111(b) and (d) facilities (*e.g.*, methane slip from engines) would be considered when determining if a facility was above or below the waste emissions threshold. While this approach would exempt emissions associated with individual CAA section 111(b) and (d) facilities that are in compliance with the standards, as anticipated by the language in CAA section 136(f)(6)(A), the EPA does not believe that this approach would be consistent with the other text in that provision that is clear that the exemption applies to the "applicable facility," which CAA section 136(d) defines as an entire subpart W facility. Further, we do not

believe that it would be practical to implement the regulatory compliance exemption in this manner because the individual emissions source types in subpart W do not always align with the individual CAA section 111(b) and (d) facilities. Exempting methane emissions from individual subpart W source types that have a similar name as a CAA section 111(b) or (d) facility may exclude a broader or narrower scope of equipment or components and associated emissions than those subject to the NSPS OOOOb/EG OOOOc. Methane emissions from CAA section 111(b) or (d) facilities therefore cannot be directly subtracted from reported subpart W data.

We request comment on the proposed approach for applying the regulatory compliance exemption to subpart W facilities and the proposed interpretation of the relevant statutory text. We also request comment on extending the regulatory compliance exemption to facilities in industry segments not currently covered by NSPS OOOOb/EG OOOOc requirements, in the event that such regulations pursuant to CAA 111(b) and (d) are finalized in the future. We recognize that the proposed approach to exempt entire subpart W facilities results in the exemption of methane emissions from sources that are not subject to NSPS OOOOb/EG OOOOc. While we believe the proposed approach is the most consistent with the language in CAA section 136(f)(6), we request comment on alternative interpretations.

f. Determining Eligibility With Respect to CAA Section 136(f)(6)(A)

It is expected that for many WEC applicable facilities, implementing NSPS OOOOb/EG OOOOc requirements would reduce methane emissions to levels below the waste emissions thresholds. The EPA interprets the regulatory compliance exemption as intending to provide relief from the WEC for WEC applicable facilities that remain above the waste emissions threshold even when their constituent CAA section 111(b) and (d) facilities (i.e. emissions sources) are in full compliance with their applicable methane emissions requirements. This structure provides a further incentive for compliance with applicable requirements.

The EPA proposes that the regulatory compliance exemption would only be available to WEC applicable facilities that exceed the waste emissions threshold. CAA section 136(f)(6)(A)

states that "charges shall not be imposed pursuant to subsection (c) on an applicable facility" that meets the requirements of the regulatory compliance exemption. Subsection (c) in turn states that a charge shall be collected "on methane emissions that exceed an applicable waste emissions threshold." Based on a plain reading of the statutory text, the EPA proposes that the exemption would not apply to WEC applicable facilities below the waste emissions threshold. Further, providing the exemption to WEC applicable facilities below the waste emissions threshold would serve no purpose as these facilities would not have positive WEC applicable emissions and therefore would not benefit from the exemption. Excluding facilities below the waste emissions threshold from the exemption would also reduce the reporting burden for those facilities, which would not be required to report information related to CAA section 111(b) and (d) compliance status.

As discussed in this section, CAA section 136(f)(6)(A) does not specify the definition of compliance for the purposes of the exemption, and many different types of compliance deviations or violations can occur. The EPA is therefore proposing what actions constitute compliance with a methane emissions requirement, pursuant to CAA section 136(f)(A), for the purposes of implementing the regulatory compliance exemption. The EPA's proposed approach is intended to provide a clear threshold for establishing compliance status and eligibility for the exemption while minimizing the burden on industry and facilitating ease of implementation. The EPA is also proposing related reporting requirements for WEC applicable facilities that are necessary to implement the regulatory compliance exemption (see section II.D.2.g. of this preamble).

CAA section 136(f)(6)(A) states that the WEC shall not be imposed "on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111." For the purpose of determining WEC facility eligibility for the regulatory compliance exemption, the EPA proposes that the compliance status of CAA section 111(b) and (d) facilities contained within a WEC applicable facility would be assessed

based on compliance with the applicable methane emissions requirements for the Oil & Natural Gas Source Category (40 CFR part 60, subparts OOOOa, OOOOb, and OOOOc).

Further, the EPA proposes that should additional NSPS/EG regulations for the oil and natural gas industry source category be finalized in the future, compliance with the methane emissions requirements in those regulations would be assessed for determining eligibility for the regulatory compliance exemption. As discussed in section II.D.2.h. of this preamble, the regulatory compliance exemption could become unavailable if future NSPS/EG revisions result in a situation such that those revisions, upon implementation, result in fewer emissions reductions than achieved by the NSPS OOOOb/EG OOOOc 2021 Proposal, had that proposal been finalized and implemented. Similarly, the exemption could be reinstated upon adoption and implementation of NSPS/EG revisions that restore emissions reduction equivalency with, or improvement upon, the NSPS OOOOb/EG OOOOc 2021 proposal. In such cases where a future NSPS/EG rule only applies to equipment in a segment of the oil and natural gas industry not covered by an existing NSPS/EG rule, the EPA proposes that any WEC applicable facilities with existing access to the regulatory compliance exemption would maintain that access. In other words, the "all states" requirement in CAA section 136(f)(6)(A)(i) would be assessed separately for the additional equipment covered by the new NSPS/EG, and any existing access to the exemption would not be lost while the determination is being made that CAA section 111(d) plans pursuant to the new EG rule were approved and in effect.

The EPA requests comment on its proposed approach for how NSPS OOOOa, NSPS OOOOb, and EG OOOOc should be considered for the purposes of the regulatory compliance exemption. The EPA also requests comment on its proposed approach in light of any potential future NSPS/EG rules for the oil and natural gas industry source category, or any other additional source category that might cover emissions sources at a WEC affected facility, and the role of any such future methane emissions requirements in determining eligibility for the regulatory compliance exemption.

The EPA proposes that any WEC applicable facility that contains CAA section 111(b) or (d) facilities would receive the regulatory compliance exemption if each of the CAA section 111(b) and (d) facilities that constitute the WEC applicable facility has no deviations or violations of the methane emissions requirements promulgated pursuant to the applicable NSPS or EG-implementing state and Federal plans. The EPA is proposing that this compliance requirement would apply for each CAA section 111(b) or (d) facility for each reporting year for the WEC applicable facility. For example, if all CAA section 111(b) or (d) facilities contained in a WEC applicable facility were in compliance with the applicable methane emissions requirements during a particular reporting year, the regulatory exemption would apply for that reporting year. If any CAA section 111(b) or (d) facilities contained in a WEC applicable facility in the respective reporting year were not in compliance with emissions requirements, the regulatory exemption would not apply for that reporting year. The EPA proposes that if a WEC applicable facility were to lose access to the regulatory compliance exemption in a reporting year due to a deviation or violation in that reporting year, it would be able to receive the exemption in any subsequent reporting year if there were no deviations or violations in that applicable reporting year.

The EPA is proposing that a WEC applicable facility would not be eligible for the regulatory compliance exemption if any CAA section 111(b) or (d) facility that is contained within the WEC applicable facility has one or more deviations or one or more violations of any methane emissions requirement under the applicable NSPS or state or Federal plan issued pursuant to the EG. The EPA recognizes that there are many potential elements to compliance with the methane requirements promulgated under CAA sections 111(b) and (d), such as compliance with a quantitative emissions limit and compliance with work practice standards, as well as multiple monitoring, recordkeeping, and reporting requirements. The EPA proposes to find that a deviation or violation from any of the methane requirements promulgated under CAA sections 111(b) and (d) constitutes non-compliance for purposes of the regulatory compliance

exemption. The EPA believes that this approach is most consistent with the plain language of CAA section 136(f)(6)(A), which states that charges shall not be imposed on a facility that is "*subject to and in compliance with* methane emissions requirements pursuant to subsections (b) and (d) of section 111".[38] First, Congress made clear that it is not enough for a particular facility to be subject to methane regulations; each facility must also comply with those regulations. And in establishing what it means to comply, Congress did not employ any mitigating language. It is not enough to be "substantively" in compliance, for example, or "in compliance with all major requirements". Facilities must be "in compliance with requirements" pursuant to 111(b) and (d).

The EPA evaluated several alternative criteria for the regulatory compliance exemption eligibility. Another interpretation could be to apply a threshold, such as specific quantitative threshold requirements, for the regulatory compliance exemption. For example, the EPA might specify that a WEC applicable facility would still be deemed to be in compliance for purposes of the regulatory compliance exemption where the number of deviations or violations, or a quantity of excess emissions, fall below a specified threshold, as applied for all the CAA section 111(b) and (d) facilities contained in a WEC applicable facility. However, for the reasons discussed in the following paragraph, the EPA is not proposing this alternative.

Deviations from or violations of any compliance requirements can vary significantly in severity and impact, as well as frequency. For example, a WEC applicable facility could contain many CAA section 111(b) and (d) facilities with numerous deviations that, even collectively, result in a small amount of excess emissions. Another WEC applicable facility could contain a single CAA section 111(b) or (d) facility with a single deviation or violation that resulted in methane emissions significantly exceeding those that would have resulted had the CAA section 111(b) or (d) facility been in compliance with its methane emissions requirements. Violations of the emission standards are not the only violations that may be significant. Violations of monitoring requirements can be very serious, given that failure to do monitoring, or doing it

[38] 42 U.S.C. 7436(f)(6)(A).

incorrectly, can result in significant emissions not being discovered or corrected. Reporting violations can also be very serious, if they result in government being unaware of significant problems and thus unable to address them. For these and many other reasons, there is often no easy way to determine the seriousness of particular violations without fact specific and resource intensive investigation. Given that deviations from and violations of requirements for emission standards under CAA section 111(b) and of state or Federal plan requirements under CAA section 111(d) can vary in type, severity, and frequency, and given that CAA section 136(f)(A) does not further specify what constitutes compliance for the purpose of the regulatory compliance exemption, the EPA is not proposing a specific quantitative threshold requirement for the regulatory compliance exemption (*e.g.*, number of violations or quantity of excess emissions).

Because under the statute the availability of the regulatory compliance exemption requires two threshold findings, including that all plans are approved and in effect, the exemption would not be available until several years after finalization of the WEC rule. See the discussion in section II.D.2.b of this preamble regarding the proposed approach for timing of the regulatory compliance exemption availability. With the exception of several sources (*e.g.*, combustion emissions for certain industry segments), most methane emission sources in covered industry segments required to report emissions under subpart W would also be subject to the CAA section 111(b) or (d) methane requirements promulgated in the final NSPS OOOOb and the plans issued and approved under EG OOOOc. The EPA expects that, as oil and gas operations implement the requirements of final NSPS OOOOb and the plans issued and approved pursuant to EG OOOOc (and undertake other methane mitigation voluntarily or due to other Federal or state regulations), total reported subpart W facility methane emissions would decline.

For many WEC applicable facilities, if the CAA section 111(b) and (d) facilities contained within a WEC applicable facility are in compliance with methane requirements promulgated under CAA sections 111(b) and (d), the WEC applicable facility would likely be

below the waste emissions threshold. The Agency therefore expects that even if CAA section 111(b) or (d) facilities within these WEC applicable facility have compliance deviations, these WEC applicable facilities will likely remain below the waste emissions thresholds. In the alternative, the EPA expects that cases of significant or widespread compliance deviations or violations with the requirements promulgated under CAA section 111(b) or (d) could result in emission levels for a WEC applicable facility that could exceed the waste emissions thresholds. Because many WEC applicable facilities are expected to be below the waste emissions threshold when the regulatory compliance exemption becomes available, the EPA expects that deviations or violations will not have a significant impact for these facilities – they would not be eligible for the exemption not only because they are out of compliance, but also because they are below the waste emissions threshold, and there is no charge to exempt in that case.

The EPA requests comment on the proposed provisions for determining "compliance" for the purposes of the regulatory compliance exemption and the alternative approaches the agency considered. The EPA requests comment on specific criteria (*e.g.*, types of deviations or violations, quantitative thresholds) that could be applied to determine compliance with methane emissions requirements promulgated under CAA sections 111(b) and (d) for the purpose of assessing WEC applicable facility eligibility for the regulatory compliance exemption. The EPA requests comment on whether the criteria should consider whether the deviation or violation resulted in excess emissions, as demonstrated by monitoring and other data. The EPA also requests comment on excluding WEC applicable facilities below the waste emissions threshold from the regulatory compliance exemption.

g. Reporting and Recordkeeping Requirements for the Regulatory Compliance Exemption

We are proposing a reporting requirement at 40 CFR 99.7(b)(2)(iv) that would require that once the Administrator has made a determination that the requirements in CAA section 136(f)(6)(A) have been met, information related to the regulatory compliance exemption must be included in the WEC filing submitted by the WEC obligated party for each WEC applicable

facility exceeding the waste emissions threshold that contains any CAA section 111(b) and (d) affected facilities. CAA section 136(f)(6)(A) mandates that the EPA shall not impose a charge upon WEC applicable facilities that qualify for the regulatory compliance exemption. The proposed approach for implementing the regulatory compliance exemption would make facilities that are below the waste emissions threshold ineligible for the exemption. The EPA therefore proposes that WEC obligated parties would not be required to report information related to the compliance status of CAA section 111(b) and (d) facilities contained within WEC applicable facilities for WEC applicable facilities that are below the waste emissions threshold.

The reporting requirements for facilities with the regulatory compliance exemption are proposed at 40 CFR 99.42. We are proposing that the filing would include a representation of the NSPS and state and Federal plan compliance status for each CAA section 111(b) and (d) facility located within a WEC applicable facility during the reporting year. This representation of compliance status would indicate whether the facility was in full compliance for the entirety of the reporting year (*i.e.,* for each CAA section 111(b) and (d) facility, there were no violations or deviations), or whether there were one or more deviations or violations during the reporting year. For facilities that meet all eligibility requirements for the exemption, we are proposing to require reporting of the ICIS-AIR ID (or if unavailable, the facility registry service (FRS) ID and EPA Registry ID from CEDRI) reporting identifiers for each CAA section 111(b) and (d) facility located at the WEC applicable facility. These identifiers are information necessary for the EPA to assess the accuracy of the representation of compliance status through linkages to reports and emissions and compliance data for each CAA section 111(b) and (d) facility located at the WEC applicable facility.

As supporting documentation for the representation of compliance status of WEC applicable facilities that are eligible for the exemption but were not in full compliance for the entirety of the reporting year, we are proposing to require the submittal of one report associated with the CAA section 111(b) and (d) facilities located within the WEC applicable facility that

documents a deviation or violation during the reporting year. As supporting documentation for the representation of compliance status of WEC applicable facilities that are eligible for the exemption and that were in full compliance for the entirety of the reporting year, we are proposing to require the submittal of report(s) associated with the CAA section 111(b) and (d) facilities located within the WEC applicable facility. The EPA recognizes that the compliance certification period for CAA section 111(b) and (d) facilities may not align with the reporting year for which the filing is being completed and that at the time of the WEC filing due on March 31 of each year, report(s) covering the complete preceding reporting year for WEC filing may not be available. To accommodate for these cases where a report is not available for the complete reporting year of WEC filing, the EPA is proposing that the WEC obligated party would provide the report, if available, that covers a portion of the year, identify the period of time covered by the report, and for the remainder of the year provide a representation of compliance status for each CAA section 111(b) and (d) facility at the WEC applicable facility that is not included in the submitted report. It also is possible that the complete calendar year of WEC filing is covered by two annual reports, each covering a portion of the calendar year. In this case, the WEC applicable facility should submit both annual reports. The EPA further recognizes that a WEC applicable facility may contain CAA section 111(b) and (d) facilities that first became subject to requirements under CAA sections 111(b) and (d) during the reporting year associated with the filing and for which the first year of compliance is not completed. For these CAA section 111(b) and (d) facilities, we are proposing to require that the filing identify the type of facility, that date that it became subject, and a representation of the compliance status for the portion of the year in which it was subject to requirements under CAA sections 111(b) and (d). In cases where the initial filing does not include a report covering the entire reporting year, we are proposing to require that the WEC obligated party provide a revised filing once such a report becomes available. The EPA is proposing that this revised filing under the WEC rule would be required to be made on or before the date that the compliance report covering the remainder of the year

would be due under the applicable requirements of CAA section 111(b) or (d). The deadlines for filing revisions to WEC filings as discussed in section III.A.4. do not apply for the submittal of compliance reports.

The EPA requires this information for the verification of exemption eligibility. Reported information will be used to conduct verification as discussed in section III.A.4., and reported information, records and other information as applicable will be used to conduct any auditing that occurs under section III.E.1.

The EPA is aware that this proposed reporting program may result in cases where a WEC obligated party makes a good-faith representation that each CAA section 111(b) and (d) facility at the WEC applicable facility is in compliance but later independently discovers the existence of one or more deviations or violations. In this proposed rulemaking, such independent discoveries would be considered to be substantive errors within the WEC filing. Proposed 40 CFR 99.7(e)(1) would require submittal of a revised WEC filing within 45 days of the discovery that a previously submitted WEC filing contains a substantive error. Provided that timely submittal of a revised filing is made, if a revised regulatory compliance exemption filing results in the imposition of WEC obligation from a WEC applicable facility that previously qualified for exemption, we are proposing that the WEC obligated party would not be subject to interest penalties normally assessed for payments made after March 31, as discussed in section III.B.1. of this preamble.

However, later discoveries of deviations or violations by the EPA or another regulatory authority, or discoveries as a result of investigation by the EPA or another regulatory authority (including information requests), are not treated the same way as errors. Where a WEC obligated party represents that each CAA section 111(b) and (d) facility at the WEC applicable facility is in compliance, but the EPA or another regulatory authority subsequently discovers the existence of one or more deviations or violations, or the CAA section 111(b) and (d) facility identifies the deviation or violation as a result of an EPA investigation (including information requests), the

WEC obligated party may be subject to enforcement and required to pay any outstanding WEC fees and interest penalties. False statements may be subject to criminal enforcement.

The EPA seeks comment on the reporting and recordkeeping requirements for the regulatory compliance exemption. We seek comment on whether additional information should be collected or retained to allow for verification of eligibility for the exemption.

h. Resumption of WEC Under CAA Section 136(f)(6)(B)

CAA section 136(f)(6)(B) states that if, at any point after the Administrator has made the determination required by CAA section 136(f)(6)(A), the conditions for such determination are no longer met, the regulatory compliance exemption ceases to apply. Because the EPA proposes to determine that the regulatory compliance exemption is only available if *all states* are subject to standards and plans pursuant to CAA sections 111(b) and (d) that are, collectively, equivalent to the NSPS OOOOb/EG OOOOc 2021 Proposal, the EPA proposes that all WEC applicable facilities would lose access to the exemption if either of the conditions in CAA section 136(f)(6)(A) ceased to apply. For example, if a state plan were legally challenged and vacated after the initial determination, plans would no longer be approved and in effect in all states, and the regulatory compliance exemption would no longer be available. Similarly, if after the initial equivalency determination methane emissions requirements promulgated under CAA section 111(b) or (d) were modified such that they no longer resulted in equivalent or greater aggregate emissions reductions than the NSPS OOOOb/EG OOOOc 2021 Proposal, the exemption would no longer be available. Note that in addition to future revisions to EG, revisions to the requirements in individual state plans pursuant to CAA section 111(d) could also result in a situation in which implementation of the final NSPS and state or federal plans does not achieve equivalent or greater emissions reductions compared to the 2021 NSPS OOOOb/EG OOOOc Proposal. (The conditions under which an individual WEC applicable facility would receive or become ineligible for the regulatory compliance exemption while the conditions in CAA section 136(f)(6)(A) are still met are discussed in section II.D.2.f. of this preamble.) The EPA proposes

that any determination that the criteria in CAA section 136(f)(6)(A) are no longer met after the initial determination would be made through a future administrative action. The EPA proposes that access to the exemption would be lost for the full calendar year in which the required criteria were no longer met. The EPA proposes that if access to the regulatory compliance exemption were lost after it was initially made available because one of the two required conditions in CAA section 136(f)(6)(A) were no longer met, it could become available again following a subsequent determination that both conditions were once again achieved. Under such circumstances, the exemption would become available again for the reporting year in which the conditions were met. The EPA proposes that if the conditions ceased to apply and were then met again in the same reporting year, the exemption would be available for the entire reporting year. The EPA requests comment on alternative approaches that would revoke the regulatory compliance exemption for a portion of the year in which the requirements were no longer met and how data under such an approach could be pro-rated for the purposes of determining WEC. The EPA requests comment on the proposed implementation of CAA section 136(f)(6)(B). While the EPA believes the proposed implementation of CAA section 136(f)(6)(B) is consistent with a plain reading of the statutory text and consistent with the proposed timing of the regulatory compliance determinations under CAA section 136(f)(6)(A) (*i.e.*, methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 have been approved and are in effect in *all States*), the agency requests comment on an approach in which access to the exemption would be lost at a state-by-state level. In this alternative approach, if circumstances occurred such that a state plan was no longer approved and in effect, only the WEC applicable facilities located in that state would lose access to the exemption; for WEC applicable facilities that span multiple states, access would be lost if the state plan for any of the states in which the WEC applicable facility is located were no longer approved and in effect.

3. Plugged Well Exemption Under CAA Section 136(f)(7)

Plugged wells have lower methane emissions than active wells and unplugged inactive wells; therefore, plugging wells will reduce total facility emissions potentially subject to WEC. Congress created an incentive for plugging and permanently shutting wells by including an exemption from the WEC in CAA section 136(f)(7): "[c]harges shall not be imposed with respect to the emissions rate 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.". Separately, in CAA section 136(a)(3)(D) and 136(b), Congress provided funding that can assist owners and operators who elect to voluntarily and permanently shut in and plug wells on non-Federal land.[39]

In this rule, we are proposing that this exemption would be applicable to wells in the onshore and offshore petroleum and natural gas production industry segments. We interpret this exemption to apply to the production industry segments only and not to wells in other segments, such as storage wells. Production wells are distinctly different in purpose and emissions profile than underground storage wells, which are generally replaced with new storage wells then they are plugged and abandoned. We seek comment on including wells in the underground natural gas storage industry segment under this exemption. We are proposing that in the WEC filing, exempted emissions would be those from wells permanently shut-in and plugged in the previous year (*i.e.*, if a well is permanently shut-in and plugged in 2026, the exempted emissions would be deducted from the 2026 emissions totals that are filed under WEC in 2027).

[39] On August 30, 2023, the EPA, U.S. Department of Energy, and National Energy Technology Laboratory announced the availability of up to $350 million in formula grant funding to eligible states to help monitor and reduce methane emissions from marginal conventional wells, including to help owners and operators voluntarily and permanently reduce methane emissions from marginal conventional wells. Inflation Reduction Act (IRA) – Mitigating Emissions from Marginal Conventional Wells, Funding Opportunity Number DE-FOA-003109, available at: *https://www.grants.gov/web/grants/view-opportunity.html?oppId=350045*.

a. Determining if the Exemption for Permanently Shut-In and Plugged Wells Applies to a WEC Applicable Facility

The EPA is proposing two criteria for determining if the exemption for permanently shut-in and plugged wells applies to a WEC applicable facility.

Consistent with the other exemptions, the first criterion is that the facility must have emissions that exceed the waste emissions threshold. CAA 136(c)(7) notes that "charges shall not be imposed" on emissions from permanently shut-in and plugged wells. Charges would not be imposed on emissions below the threshold and therefore an exemption is unnecessary in cases where facility emissions are below the threshold. The EPA proposes that emissions from facilities that are below the waste emissions threshold would not be exempted. The EPA proposes that for facilities that exceed the waste emissions threshold, emissions eligible for the plugged well exemption could be subtracted up to the point where facility emissions equal the waste emissions threshold (*i.e.*, the lowest possible WEC applicable emissions for a facility with the plugged well exemption would be zero).

Second, wells must meet the following definition of permanently shut-in and plugged in accordance with all applicable closure requirements. The EPA proposes that for the purposes of this exemption, a permanently shut-in and plugged well is one that has been permanently sealed to prevent any potential future leakage of oil, gas, or formation water into shallow sources of potable water, onto the surface, or into the atmosphere. For the purposes of this exemption, the EPA is proposing that a well would be considered to be permanently shut-in and plugged, in accordance with all applicable closure requirements, if the owner or operator has met all applicable Federal, state, and local requirements for closure in the jurisdiction where the well is located. For the purposes of this exemption, we are proposing that a well would be considered permanently shut-in and plugged on the date a metal plate or cap has been welded or cemented onto the casing end.

Section II.D.3.c. below details the reporting requirements for this exemption which provide information necessary for verification of the exemption eligibility and exempted emission quantities.

In addition to requirements specifying how to plug a well, relevant Federal, state, and local requirements often also specify requirements such as for notifications, reporting, and site remediation. For purposes of 40 CFR part 99, we propose that the applicable closure requirements would include only the requirements specific to well plugging. We are not proposing to include requirements for notifications, reporting, and site remediation as part of the exemption eligibility criteria for following "all applicable closure requirements" because the closure of the well is the key activity impacting methane emissions, which is the focus of the WEC, and these other aspects of closure are less relevant to methane emissions levels. We also note that had we proposed to include these additional requirements in our interpretation of "all applicable closure requirements," the reporting requirements would increase for permanently shut-in and plugged wells and this may lead to recalculations of WEC years after the exemption was initially applied. We request comment on whether "all applicable closure requirements" should instead be interpreted to include notifications, reporting, site remediation and other post-closure activities at plugged well.

b. Calculations of Exempted Emissions from Permanently Shut-In and Plugged Wells

The EPA proposes that the methane emissions eligible for the exemption are those that occur at the well level including those from wellhead equipment leaks, liquids unloading, and workovers with and without hydraulic fracturing in the reporting year in which the well was plugged. We are proposing to only consider these emissions sources in the calculation of exempted emissions for the permanently shut-in and plugged well as we expect use of production-related equipment or equipment associated with treating production streams generally (*e.g.*, AGRU, dehydrator, separator) to be at a minimum. We are proposing to limit the emissions quantity to the source types we expect to represent the most significant emissions share expected

at permanently shut-in and plugged wells. We note that methane emissions in the reporting year from other equipment onsite (*e.g.*, separator, compressor, flare) may result from multiple wells and not just the wells that are plugged in the reporting year. We request comment on an interpretation that would exempt all methane emissions associated with the production from the permanently shut-in and plugged well – not limited to the wellhead equipment leaks, liquids unloading, and workovers as is included in this proposal – during the calendar year of closure, including the methodology by which methane emissions from non-wellhead specific sources in subpart W could be attributed to the permanently shut-in and plugged well.

For the purposes of quantifying the methane emissions from equipment leaks, liquids unloading, workovers with hydraulic fracturing, and workovers without hydraulic fracturing associated with each permanently shut-in and plugged well, we are proposing to use the methane emissions and throughput data collected or reported to subpart W of part 98. As discussed previously in this preamble, proposed amendments in the 2023 Subpart W Proposal impact the data available to best estimate the exempted emissions from the permanently shut-in and plugged well. Therefore, as described in more detail in this section, for applicable emission sources and industry segments, different approaches are proposed for certain time periods.

The current subpart W rule requires that onshore petroleum and natural gas production facilities report methane emissions from liquids unloading and workovers to be reported by sub-basin for each WEC applicable facility as well as methane emissions from equipment leaks at the facility-level. Subpart W of part 98 also currently requires offshore petroleum and natural gas production facilities and onshore petroleum and natural gas production facilities to report facility-level throughput of gas and oil handled or sent to sale, respectively. Proposed revisions included in the 2023 Subpart W Proposal would require onshore petroleum and natural gas production facilities to report additional elements that facilitate quantification of methane emissions from individual shut-in and plugged wells. Specifically, beginning in reporting year 2024, the 2023 Subpart W Proposal would require onshore petroleum and natural gas production

facilities to report well-level throughput volumes for gas and oil sent to sale from wells that are permanently shut-in and plugged. Additionally, beginning in reporting year 2025, the 2023 Subpart W Proposal would increase the granularity of methane emissions reporting for liquids unloading and workovers to the well-level and methane emissions reporting for equipment leaks to the well pad level. Due to the differences in available reporting data for 2024 and future years, the proposed approach for quantifying methane emissions in part 99 for individual wells located at onshore petroleum and natural gas production facilities that are permanently shut-in and plugged in 2024 would be different than the proposed approach for quantifying methane emissions from wells located at onshore petroleum and natural gas production facilities that are permanently shut-in and plugged in 2025 and future years.

For reporting year 2024, the EPA proposes through 40 CFR 99.52 that WEC applicable facilities in the onshore petroleum and natural gas industry segment would quantify methane emissions from permanently shut-in and plugged wells by allocating the subpart W of part 98 reported facility-level equipment leak, liquids unloading, and workover methane emissions using subpart W of part 98 reported production volumes of gas and oil sent to sale. We are proposing that WEC applicable facilities in the onshore petroleum and natural gas industry segment would sum the total subpart W of part 98 reported methane emissions from equipment leaks, liquids unloading, and workovers, and multiply the sum of the methane emissions by the ratio of subpart W of part 98 reported production at the permanently shut-in and plugged well to the subpart W of part 98 reported facility-level total production.

For facilities with only gas production with exempt plugged well emissions, we are proposing that the reported gas produced from the plugged wells be divided by the total gas production at the facility to develop the ratio. For facilities with only oil production with exempt plugged well emissions, we are proposing that the reported oil produced from the plugged wells be divided by the total oil production at the facility to develop the ratio. For facilities with both gas and oil production with exempt plugged well emissions, we are proposing that gas

production that is reported to subpart W of part 98 by the WEC applicable facility in the onshore petroleum and natural gas industry segment would be converted to barrels of oil equivalent using a default value of 6,000 scf/barrel, such that throughput volumes will be on the same basis for facilities that report production of gas and oil. We are seeking comment on whether the EPA should provide an option for WEC applicable facilities to use a facility-specific value for barrels of oil equivalent, including whether facilities routinely determine this value and whether significant variability is expected in this value.

For 2025 and future years, we are proposing that WEC applicable facilities in the onshore petroleum and natural gas industry segment would estimate well-level emissions in accordance with part 98 methods for the permanently shut-in and plugged well. As described previously, for 2025 and future years, subpart W of part 98 would require reporting of methane emissions from liquids unloading and workovers to be at the well-level for facilities in the onshore petroleum and natural gas industry segment, therefore we are proposing that facilities in the onshore petroleum and natural gas industry segment would utilize the methane emissions as -reported to subpart W part 98 in their part 99 exemption calculation for these emissions sources. Also, as described previously, for 2025 and future years, subpart W of part 98 would require reporting of methane emissions from equipment leaks at the well pad for facilities in the onshore petroleum and natural gas industry segment. In order to obtain a well-level estimate for the part 99 exemption calculation, we are proposing to require facilities in the onshore petroleum and natural gas industry segment to utilize the subpart W of part 98 input data and emission estimation methods for wellhead equipment leaks to calculate the methane emissions at the well level for the permanently shut-in and plugged well. For example, if the equipment leak methane emissions at the well pad that includes the permanently shut-in and plugged well were estimated using the leaker method in 40 CFR 98.233(q), the WEC applicable facility would use the count of leakers by component type (*e.g.*, valve, connector) recorded for the permanently shut-in and plugged well, the operating time of the well during the year, and the appropriate emissions factors from

subpart W of part 98 to estimate the methane emissions from the permanently shut-in and plugged well. Similarly, if the equipment leak methane emissions at the well pad that includes the permanently shut-in and plugged well were estimated using the population count method in 40 CFR 98.233(q), the WEC applicable facility would use the operating time of the well during the year and the appropriate emissions factors from subpart W of part 98 to estimate the emissions from the permanently shut-in and plugged well.

For offshore petroleum and natural gas production facilities, the current subpart W of part 98 reporting requirements are based on the facility's submission to the Bureau of Ocean Energy Management (BOEM), which includes methane emissions for component-level equipment leaks. The methane emissions required to be reported by offshore facilities would be unchanged by the 2023 Subpart W Proposal as it pertains to this exemption in that these facilities will continue to report the data from their BOEM report. Subpart W of part 98 also currently requires offshore petroleum and natural gas production facilities to report facility-level throughput of gas and oil handled in the reporting year. Proposed revisions included in the 2023 Subpart W Proposal for offshore petroleum and natural gas production facilities would add requirements for the reporting of well-level throughput volumes for gas and oil sent to sale from wells that are permanently shut-in and plugged beginning in reporting year 2024. The 2023 Subpart W Proposal would also revise the terms in the current reporting elements for facility-level throughputs to refer to gas sent to sale, rather than handled, for consistency with the CAA language and with the onshore production industry segment. As noted in the preamble for the 2023 Subpart W Proposal, these verbiage changes for facility-level throughput are not expected to impact the quantity of production volumes reported and were made for consistency and clarity. For the purposes of estimating the exempted emissions for permanently shut-in and plugged wells at offshore petroleum and natural gas production facilities, we are proposing that facilities allocate the component level equipment leaks (*i.e.*, those from valves, connectors) reported to subpart W of part 98 by the ratio of production from the well that has been permanently shut-in and plugged to

the total facility-level production. Analogous to the approach for onshore petroleum and natural gas production facilities for reporting year 2024, we are proposing that gas sent to sale be converted to BOE using a default value of 6,000 scf/bbl BOE.

For all reporting years and applicable industry segments, if the WEC applicable facility has more than one permanently shut-in and plugged well, we are proposing that the part 99 emissions calculations would be performed for each well and summed to determine the net annual quantity of methane emissions at the WEC applicable facility eligible for the exemption.

c. Reporting and Recordkeeping Requirements for the Exemption for Permanently Shut-In and Plugged Wells

Through the provisions proposed at 40 CFR 99.51, the EPA is proposing that the WEC obligated party receiving the exemption would provide for each well at a WEC applicable facility, the well ID number as reported to subpart W of part 98; the date the well was permanently shut-in and plugged; the statutory citation for each state, local, and Federal regulation stipulating requirements that were applicable to the closure of the permanently shut-in and plugged well; the emission attributable to the well, and for each WEC applicable facility, the total emissions attributable to all permanently shut-in and plugged wells at the facility; and a certification statement by the designated representative for the WEC obligated party that all identified wells were closed in accordance with state, local, and Federal requirements. We are proposing that the information included in the report would be subject to the general recordkeeping requirements for part 99, meaning these records must be retained for 5 years following the WEC filing year of the exemption such that they can be made available to the EPA for inspection and review.

The EPA requires this information for the verification of exemption eligibility and of exempted emission quantity. Reported information will be used to conduct verification as discussed in section III.A.4., and reported information, records and other information as applicable will be used to conduct any auditing that occurs under section III.E.1.

The EPA seeks comment on the reporting and recordkeeping requirements for the exemption for emissions from wells that are permanently shut-in and plugged. We seek comment on whether additional information should be collected or retained to allow for verification of the quantity of emissions eligible for the exemption.

## III. General Requirements of the Proposed Rule

### *A. WEC Reporting Requirements*

#### 1. Required Reporters

The WEC obligated party would be required to submit a WEC filing annually by March 31 that would include data collected from each WEC applicable facility of which it (the WEC obligated party) is comprised as of December 31 of each reporting year. The WEC filing would provide the data necessary for the EPA to assess and verify the WEC obligation including certain part 98 emissions information and netting, as applicable, as well as supporting documentation for any WEC applicable facility exemptions.

#### 2. Reporting Deadlines

As required under the CAA sections 136(c) and (e), the assessment of the first WEC will be based on data collected under subpart W of the GHGRP beginning on January 1, 2024. We are proposing in 40 CFR 99.5 that the first WEC filing would be due March 31, 2025, and would be required to be submitted annually by March 31 thereafter, as applicable. We have proposed the March 31 reporting deadline under this action for the purpose of quantifying WEC such that the information reported for part 99 can be done in coordination with and on the same schedule as (*i.e.*, by March 31 of the calendar year following the reporting year) the information reported under subpart W.

The EPA is proposing that final revisions to the first WEC filing, with the exception of resubmissions to provide CAA section 111(b) or (d) compliance reports or revisions to previously reportd compliance reports for the purposes of the regulaltory compliance exemption, would be due by November 1, 2025, and would be required to be submitted annually by

November 1 thereafter, as applicable (see section III.A.4. of this preamble for discussion and request for comment on this deadline).

3. Submission of the WEC Filing

The EPA proposes that each WEC filing must be submitted electronically in accordance with the requirements of 40 CFR 99.6 and in a format specified by the Administrator.

As noted previously in this section of the preamble, the EPA proposes that each WEC obligated party will submit a WEC filing annually. The WEC filing content we are proposing is expected to provide the data necessary to complete the WEC calculations as described previously in the preamble. We are proposing WEC filing reporting requirements to cover general company information including physical address, email, telephone number, list of associated WEC applicable facilities and their identifying information (*e.g.*, part 98, subpart W e-GGRT ID), as well as the net WEC emissions calculated in accordance with 40 CFR 99.22 and the WEC obligation as calculated pursuant to 40 CFR 99.23. We are also proposing that each WEC obligated party's WEC filing include certain information at the WEC applicable facility level. Specifically, we are proposing that for each WEC applicable facility that comprises the WEC obligated party, the reporting requirements would cover facility-level information including the facility's eGGRT ID, the facility's industry segment(s), the facility's waste emissions threshold calculated in accordance with 40 CFR 99.20, and the facility's WEC applicable emissions calculated in accordance with 40 CFR 99.21.

The EPA seeks comment on these reporting and recordkeeping requirements (e.g., date of WEC filing and payment for the first year). We seek comment on whether additional information should be reported to EPA or retained by the WEC obligated party or WEC applicable facility to allow for verification of the WEC filing.

The EPA is also proposing reporting requirements for each WEC obligated party related to the three WEC exemptions, which are discussed in sections II.D.1. through 3. of this preamble. Under the proposed approach, the exemptions are only available to WEC applicable

facilities that exceed the waste emissions threshold. The EPA therefore proposes that these reporting requirements would only apply to WEC applicable facilities that exceed the waste emissions threshold and are otherwise eligible for the exemption(s). The EPA seeks comment on the reporting requirements for each exemption, as noted in sections II.D.1. through 3. of this preamble.

4. Verification and WEC Filing Revisions

We anticipate that the foundation of the WEC obligated party's WEC filing would be the methane emissions and throughput reported by the WEC applicable facilities in their subpart W reports. As specified in § 98.3(f) and (h) of this chapter, part 98 currently includes a verification process and resubmission process for resolving substantive error(s)[40] in reporting. These errors are either found through self-discovery by the WEC obligated party or are found by the EPA during the verification process. In part 98, errors must be resolved within 45-days from discovery or notification of the error by the EPA. The EPA may grant a 30-day extension request if the request is timely, such that a total of 75 days may be provided for complete issue resolution. Additional extensions may be approved by the Administrator in specified limited circumstances. Resolution is either made by report revision and resubmission or by providing an adequate demonstration that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error. Upon satisfying these requirements, the EPA designates the part 98 report as verified. If the requirements in § 98.3 of this chapter are not satisfied, the EPA considers the part 98 report unverified.

We are proposing that the verification status of the WEC applicable facility with respect to the reporting in subpart W part 98 would be considered by the EPA when determining the verification status of the part 99 filing because the subpart W data would be the cornerstone of the WEC. In effect, a WEC filing may not achieve verified status until all errors associated

[40] 40 CFR 98.3(h)(3): A substantive error is an error that impacts the quantity of GHG emissions reported or otherwise prevents the reported data from being validated or verified.

subpart W reports that impact total WEC are corrected. For example, if the subpart W part 98 report of one WEC applicable facility contains errors related to reported emissions or throughput that affect total WEC, the EPA could by extension consider the WEC filing of the WEC obligated party that includes that WEC applicable facility to be unverified. However, there may also be situations in which an unverified subpart W part 98 report does not impact the ability to accurately calculate a WEC obligated party's WEC obligation. In these circumstances, the proposed approach would allow the EPA to verify a WEC obligated party's part 99 report even if the part 98 report of a WEC applicable facility associated with the WEC obligated party remained unverified.

Separately, there are elements of the part 99 filing that would not be tied to the subpart W report, such as the calculation of the WEC including netting and any exemption information. We are proposing to implement a similar verification procedure under part 99 to that which exists under part 98. In implementing the verification of information submitted under part 99, the EPA envisions a two-step process. First, we propose to conduct an initial centralized review of the data that would help assure the completeness and accuracy of data. Second, the EPA intends to notify WEC obligated parties of potential errors, discrepancies, or make inquiries as needed concerning the WEC filing. Specifically for this rulemaking, we anticipate that there could be errors or clarifications with respect to the supporting documentation and quantification of emissions associated with exemptions from the WEC, which may require EPA review to evaluate and confirm their validity and accuracy. The part 99 verification review would identify issues resulting from the calculation of WEC based on verified subpart W GHGRP reports and verified WEC filings to the extent possible. A thorough discussion of the separate process for unverified reports and approach for reassessment of WEC obligation due to resubmissions is discussed in section III.B. of this preamble.

We are proposing provisions that would require a WEC obligated party to resubmit their WEC filing within 45-days of either being contacted in writing by the EPA notifying them of the

presence of a substantive error in their WEC filing or by self-discovering that a previously submitted WEC filing contains one or more substantive errors (except as described later in this section), or within 75 days if granted a 30-day extension per 40 CFR 99.7(e)(4). For the purposes of part 99, we are proposing to consider a substantive error to be an error that impacts the Administrator's ability to accurately calculate the WEC obligated party's obligation, which may include, but would not be not limited to, the list of WEC applicable facilities associated with a WEC obligated party and corresponding data reported in each listed WEC applicable facility part 98 report(s), emissions associated with exemptions, and supporting information for each exemption to demonstrate its validity. We are proposing that the revised WEC filing must correct all substantive errors or provide information demonstrating that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error.

We are also proposing that if a WEC applicable facility revises and resubmits their part 98 report, which results in impacts on the WEC calculations, the WEC obligated party would also be required to submit a revised WEC filing that includes the number of corrections and information detailing the correction(s) made. In the event that a subpart W report revision results in a change in the applicability of part 99 to the facility, under the proposed provisions the WEC obligated party would either submit a WEC filing adding or removing any facilities, as appropriate. As described in the paragraph below, with the exception of resubmissions to provide CAA section 111(b) or (d) compliance reports or revisions to previously reported compliance reports for the purposes of the regulatory compliance exemption, the EPA is proposing that part 99 resubmissions would only be allowed up to November 1 of the year following the reporting year. Any part 98 resubmissions after this date that impact WEC calculations would not be required to be resubmitted in a revised WEC filing; facilities could continue to resubmit data under subpart W at any time. Resubmissions related to CAA section 111(b) or (d) compliance reports for the purposes of the regulatory compliance exemption must be made as discussed in

section II.D.2.g. of this preamble.Under subpart W, facilities may resubmit data for historic reporting years via e-GGRT for the most recent five reporting years (e.g., submit updates to 2019 data in 2022). Data resubmission for historic reporting years in the context of the WEC program is extremely complicated due to the potential changes in facility ownership over time and the implications this has on netting of emissions from facilities under common ownership or control. For example, a company or a facility owned by a company in one year may be owned in whole or in part by one or multiple different companies the next year. With such changes occurring annually to multiple facilities across multiple owners and operators with more than one facility under common ownership or control, there is no practical means of incorporating resubmitted data for historic reporting years in the WEC program. This would require the EPA to engage in a potentially constant series of WEC recalculations and associated invoicing or refunds. The EPA therefore proposes a deadline of November 1 for each year, after which time no WEC filings could be resubmitted. For example, resubmissions of data initially reported by March 31, 2025, used to assess WEC for the 2024 reporting year, would be required to be submitted by November 1, 2025. This proposed approach would not allow resubmissions for historic reporting years for WEC filings, even if their corresponding subpart W data was resubmitted for historic reporting years for purposes of subpart W. Subpart W facilities would continue to be subject to part 98 existing requirements for resubmitting data for previous reporting years, but any data resubmitted under part 98 after November 1 of the calendar year following the respective reporting year would not be considered for the purposes of WEC under part 99. This deadline would apply to all WEC applicable facilities, including those with data verified by EPA. The EPA's proposed approaches for WEC filing requirements and data verification are intended to incentivize complete and accurate WEC filings under part 99, and thus corresponding reporting of complete and accurate data under part 98, by March 31 of each year. As a result, the EPA expects that there will be little need to resubmit data after this initial reporting deadline, and the seven months between March 31 and the proposed final deadline of November 1 would give

facility owners or operators sufficient time to make any resubmissions. The EPA proposes that it would retain the right to reevaluate WEC obligations in WEC filings after November 1 (e.g., as part of an EPA audit of facility data). Similarly, the November 1 deadline would not apply to adjustments to WEC obligations resulting from the process to resolve unverified data, proposed at 40 CFR 99.8, should that resolution occur after November 1.

The EPA requests comment on the proposed approach of setting a deadline for WEC resubmissions under part 99 and in doing so not allowing data resubmissions for the WEC filing for previous historic reporting years. The EPA requests comment on the November 1 deadline and options for alternative deadlines. The EPA also requests comment on alternative approaches that would allow data resubmissions for historic reporting years under the WEC program, as well as comment on how such changes would be incorporated into netting for historic reporting years.

*B. Remittance and Assessment of WEC*

We are proposing that each WEC obligation payment must be submitted electronically in accordance with the proposed requirements of 40 CFR 99.6 and in a format specified by the Administrator as part of the submission of the WEC filing (*i.e.*, by March 31 each year covering the preceding reporting year).

For the purposes of ensuring timely payment of the WEC, the EPA is proposing financial sanctions under 40 CFR 99.10 of subpart A, pursuant to the authority included in the Federal claims provision at 31 U.S.C. 3717. These penalties would apply to delinquent WEC payments. Under 31 U.S.C. 3717, there are interest, penalties, and costs that may be imposed on outstanding or delinquent debts arising under a claim owed by a person to the U.S. Government. Specifically, under 31 U.S.C. 3717(a)(1), agencies shall charge a minimum annual rate of intereston an outstanding debt on a United States Government claim owned by a person.[41] Under

[41] This rate of interest is known as the Current Value of Funds Rate, or CVFR, and is published prior to November 30th of each year by Treasury. The CVFR is based on the weekly average of the Effective Federal Funds Rate, less 25 basis points, for the 12-month period ending September 30th of each year, rounded to the nearest whole percent. This rate may be revised on a quarterly basis if the annual average, on a moving basis, changes by 2 percentage points or more.

the EPA's implementing Policy Number 2540-9-P2, accounts are considered delinquent when the EPA does not receive payment by the due date specified on a bill or invoice (*i.e.*, for the WEC obligation at the time of submission of the WEC filing). The EPA is proposing to cite this Federal claims interest charge authority as the first tier of WEC payment sanctions.

Second, under 31 U.S.C. 3717(e)(1), agencies must collect an additional penalty charge of not more than six percent per year for failure to pay any part of a debt more than 90 days past due, as well as additional charge to cover the cost of processing delinquent claims. Under Policy Number 2540-9-P2, the EPA Finance Centers are responsible for issuing demand notices and conducting collection efforts for the Agency. The EPA Finance Centers would assess interest, handling, and penalty charges in 30-day increments for late payments and would assess the 6 percent penalty with the 3rd demand letter or notice.

The EPA therefore proposes to include this additional 6 percent non-payment penalty charge for WEC debts that are more than 90 days past due. This would be the second tier of sanction authority under this proposal's set of payment sanctions and would be implemented if the first tier of interest charges is not effective in causing a delinquent WEC obligated party to make their payments current. The EPA seeks comment on its proposed approach for applying interest to late WEC fee payments.

Additionally, for WEC obligated parties that fail to submit their annual WEC filing by the deadline discussed in section III.A.2. of this preamble, the EPA is proposing a daily penalty no greater than the rate associated with 42 U.S.C. 7413(d)(1) specified in Table 1 of 40 CFR 19.4, as amended. The EPA Finance Centers would assess interest, handling, and penalty charges in 30-day increments. We are proposing that the assessment of this penalty would begin on the date that the WEC filing was considered past due (*i.e.,* April 1st) and continue until such time that the WEC filing is submitted and certified by the WEC obligated party. The EPA requests comment on its proposed approach of establishing a daily penalty for unsubmitted WEC filings.

1. Process for Reassessing WEC for WEC Filings Resubmitted After the Initial Waste Emission Charge Has Been Assessed

As discussed in section III.A.4. of this preamble, WEC obligated parties may need to resubmit their WEC filings and WEC applicable facilities may need to resubmit their GHGRP reports. These resubmittals have the potential to result in recalculation of the WEC obligation for the WEC obligated party. As discussed in section III.A.4. of this preamble, the EPA proposes that data resubmissions for the previous reporting year would be required to be submitted by November 1 in order to be considered for WEC recalculations, with the exeption of resubmissions related to CAA section 111(b) or (d) compliance reports for the purposes of the regulatory compliance exemption. If the recalculated WEC obligation is less than the original WEC obligation owed by the WEC obligated party, we propose that the EPA would authorize a refund to the WEC obligated party equal to the difference in WEC obligation. If the recalculated WEC obligation is greater than the original WEC obligation owed by the WEC obligated party, the EPA would charge the WEC obligated party for the remaining balance of the WEC, including any assessed fees or penalties.[42] To encourage careful attention to detail and reduce the need for WEC filing revisions, we are proposing to charge a daily interest rate for any revised WEC filing that results in additional WEC being owed. As proposed in 40 CFR 99.8, this daily interest rate would be assessed from April 1st (*i.e.*, the day after the submission deadline) until such time that a resubmitted WEC filing and payment, that is subsequently verified by the EPA, is certified by the designated representative. We propose a daily interest rate equal to theCurrent Value of Funds Rate, consistent with 31 U.S.C. 3717(a). The EPA proposes that payment for any additional WEC, including assessed interest, would made with the resubmitted WEC filing.

[42] We propose that WEC obligated parties would be subject to the financial sanctions proposed in 40 CFR 99.10 for any delinquent payments of the revised WEC invoice(s), as discussed in section III.B. of this preamble.

The EPA seeks comment on the proposed approach for resubmitted WEC filings, including the application of daily interest rate for revised WEC filings that result in additional WEC being owed.

2. Process for Assessing WEC for Unverified Part 99 Filings

As discussed in section III.A.4. of this preamble, the EPA's verification review process ideally ends with the resolution of identified potential errors through either correction and resubmission of facilities' reports or justification provided through correspondence with reporters that no substantive error exists. When WEC applicable facilities or WEC obligated parties do not provide appropriate information to resolve the errors in their part 98 or part 99 data after 45 days (with the possibility of a 30-day extension) of either being contacted in writing by the EPA notifying them of the presence of a substantive error or by self-discovering that a previously submitted part 98 report or WEC filing contains one or more substantive errors, the EPA considers their WEC filing to be unverified.

If a WEC filing is unverified but the EPA is able to correct the error(s) based on reported data, we propose that the EPA will recalculate the WEC using available information and provide an invoice or refund to the WEC Obligated Party within 60 days of determining a WEC filing to be unverified. If the WEC Obligated Party resubmits a WEC filing within that timeframe, the EPA would either accept the resubmission, or take the resubmission into account when calculating the WEC. In cases where the EPA is unable to calculate the WEC with available information, the WEC Obligated Party may be required to undergo a third-party audit. The third-party auditor must review records kept by the WEC Obligated Party, quantify the WEC with available information and in accordance with the requirements of this part, and submit the updated WEC calculations and supporting data to the EPA. The EPA would then take that information into consideration and calculate the WEC and provide an invoice to the WEC Obligated Party. Third-party audits may be required to be arranged by and conducted at the expense of the WEC obligated party.

A WEC obligated party would be required to pay an invoice received from the EPA for any updated WEC obligation by the specified due date, or within 30 days of the date of the invoice or bill if a due date is not provided.

The EPA requests comment on the proposed approach for assessing WEC for unverified part 99 reports, including the EPA recalculating WEC when data are available, and the option of requiring third-party auditing of WEC obligated party records when the EPA is not able to recalculate WEC with the available information. The EPA requests comment on an alternative approach that would establish default values (*e.g.*, industry segment-specific methane intensities) that would be conservative in nature and used to calculate WEC applicable emissions from unverified reports until such time that the report becomes verified. The calculated methane emissions from the unverified report(s) would then be included when determining the WEC obligated party's WEC obligation. In this approach, the EPA envisions that similar financial sanctions as those discussed in section III.B.2. of this preamble would be applied until a verified report is submitted and certified by the WEC applicable facility. We also seek comment on additional gap-filling approaches for unverified GHGRP reports. In addition, the EPA seeks comment on an approach for unverified reports that would apply daily penalties on unverified reports, up to the rate associated with U.S. Code citation 42 U.S.C. 7413(d)(1) specified in Table 1 of 40 CFR 19.4, as amended. Under such an approach, the EPA seeks comment on the duration of the penalty (*e.g.*, 3 years or until the report is verified, whichever is sooner).

*C. Authorizing the Designated Representative*

We are proposing provisions for each affected WEC obligated party to identify a designated representative. We are proposing that each WEC obligated party would each have one designated representative who is an individual selected by an agreement binding on the WEC obligated party. This designated representative would act as a legal representative between the WEC obligated party and the Agency. We are proposing that the designated representative must submit a complete certificate of representation at least 60 days prior to the submission of the first

WEC filing made by the WEC obligated party. Additionally, each WEC filing would contain a signed certification by a designated representative of the WEC obligated party. On behalf of the owner or operator, the designated representative would certify under penalty of law that the WEC filing has been prepared in accordance with the requirements of 40 CFR part 99 and that the information contained in the WEC filing is true and accurate, based on a reasonable inquiry of individuals responsible for obtaining the information.

We are also proposing that the designated representative could appoint an alternate to act on their behalf, but the designated representative would maintain legal responsibility for the submission of complete, true, and accurate emissions data and supplemental data. A designated representative or alternate designated representative may delegate one or more "agents." The agent (*e.g.*, a part 98 subpart W designated representative who can provide facility-specific information) can enter data for a part 99 WEC filing, but is not allowed to submit, certify, or sign a WEC filing.

We are proposing that within 90 days after any change in the WEC obligated party, the designated representative or any alternate designated representative must submit a certificate of representation that is complete under this section to reflect the change.

*D. General Recordkeeping Requirements*

We are proposing that WEC applicable facilities and WEC obligated parties must retain all required records for at least 5 years from the date of submission of the WEC report for the reporting year in which the record was generated. We are proposing that the records shall be kept in an electronic or hard-copy format (as appropriate) and recorded in a form that is suitable for expeditious inspection and auditing. Under the proposed provisions, upon request by the Administrator, the records required under this section must be made available to the EPA. We are proposing that records may be retained off site if the records are readily available for expeditious inspection and review. For records that are electronically generated or maintained, we are proposing that the equipment or software necessary to read the records shall be made

available, or, if requested by the EPA, electronic records shall be converted to paper documents. The records that the EPA is proposing that must be retained would include information required to be retained under part 98, specifically subparts A and W, any other information needed to complete the WEC filing, and all information required to be submitted as part of the WEC filing, including any supporting documentation.

*E. General Provisions, Including Auditing and Compliance and Enforcement*

1. Auditing Provisions

We are proposing that the EPA may conduct on-site audits of facilities, as indicated in 40 CFR 99.7(c). Under the proposed general recordkeeping provision at 40 CFR 99.7(d), the records generated under this part would be available to the EPA during an on-site audit as the records must be recorded in a form that is suitable for expeditious inspection and review, and must be made available to the EPA upon request. The on-site audits may be conducted by private auditors contracted by the EPA or by Federal, State or local personnel, as appropriate, and may be required to be arranged by and conducted at the expense of the WEC obligated party.

2. Compliance and Enforcement

We are proposing that any violation of any requirement of this part shall be a violation of the Clean Air Act, including section 114 (42 U.S.C. 7414) and section 136 (*42 U.S.C. 7436*). A violation would include but is not limited to failure to submit, or resubmit as required, a WEC filing, failure to collect data needed to calculate the WEC charge (including any data relevant to determining the applicability of any exemptions), failure to retain records needed to verify the amount of WEC charge, providing false information in a WEC filing, and failure to remit WEC payment. As proposed at 40 CFR 99.4(b), it is a violation to fail to authorize a designated representative for a WEC obligated party. In the case of a facility with more than one owner or operator, failure to select a WEC obligated part would constitute a violation on the part of each owner or operator, as proposed at 40 CFR 99.4. Each day of a violation would constitute a separate violation.

## IV. Proposed Confidentiality Determinations for Certain Data Reporting Elements

### *A. Overview and Background*

In this action, the EPA is proposing to require WEC obligated parties to report the general information described in section III.A.3. of this preamble and the information specific to any applicable exemptions as described in sections II.D.1. through 3. of this preamble. This information is necessary for the EPA to verify the contents of the WEC filing, including confirming that all of the required WEC applicable facilities were included, each WEC applicable facility is eligible for any exemptions that were applied, and the WEC applicable emissions and the amount of the WEC obligation were calculated correctly. As explained in the remainder of this section, the EPA is proposing that nearly all of the data reported would be either emission data or otherwise ineligible for confidential treatment. The information that may be eligible for confidential treatment would be information included in supporting documentation required for eligible exemptions or additional information provided in software comments fields.

Section 114(c) of the CAA requires that "[a]ny records, reports, or information obtained under [CAA section 114(a)] shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) . . . if made public, would divulge methods or processes entitled to protection as trade secrets . . ., the Administrator shall consider such record, report, or information or particular portion thereof confidential. . . ." Thus, the CAA begins with a presumption that information submitted to the EPA may be disclosed to the public. It then provides a narrow exception to that presumption for information that "if made public, would divulge methods or processes entitled to protection as trade secrets. . . ." Section 114(c) of the CAA narrows this exception further by excluding "emission data" from the category of information eligible for confidential treatment. The EPA has interpreted CAA section 114(c) to

afford confidential treatment to both trade secrets and confidential business information that are not emission data (40 FR 21987, 21990 (May 20, 1975)).

While the CAA does not define "emission data," the EPA has done so by regulation at 40 CFR 2.301(a)(2)(i). Emission data means, with reference to any source of emissions of any substance into the air—

(A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;

(B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and

(C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

Further, in a 1991 EPA notice of policy (56 FR 7042, February 21, 1991), the EPA stated that certain data fields constitute "emission data" and therefore cannot be withheld as confidential. The 1991 document indicated that while confidentiality determinations are typically made on a case-by-case basis, some kinds of data will always constitute emission data within the meaning of CAA section 114(c). The document listed several data fields that EPA considered to be emission data including facility identification data (*e.g.*, facility name; address; ownership; Standard Industrial Classification (SIC); emission point, device or operation description information) and emission parameters (*e.g.*, compounds emitted; origin of emissions; emission rate, concentration, release parameters, boiler or process design capacity, emission estimation

method). The document clarified that the list of types of information in the document was not exhaustive and that other data might also constitute emission data.

For data that are not "emission data," the confidentiality determination criteria at 40 CFR 2.208(a) through (d) are as follows:

Determinations issued under §§ 2.204 through 2.207 shall hold that business information is entitled to confidential treatment for the benefit of a particular business if:

(a) The business has asserted a business confidentiality claim which has not expired by its terms, nor been waived nor withdrawn;

(b) The business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures;

(c) The information is not, and has not been, reasonably obtainable without the business's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding); and

(d) No statute specifically requires disclosure of the information.

In *Food Marketing Institute* v. *Argus Leader Media*, 139 S. Ct. 2356 (2019) (hereafter referred to as *Argus Leader*), the U.S. Supreme Court issued an opinion addressing the meaning of the word "confidential" in Exemption 4 of the Freedom of Information Act, 5 U.S.C. Section 552(b)(4)(2012 and Supp. V. 2017) stating that "confidential" must be given its "ordinary" meaning, which is information that is "private" or "secret." As a result, starting with the date of the *Argus Leader* ruling, the EPA no longer assesses data elements using the rationale of whether disclosure will cause a likelihood of substantial competitive harm when making confidentiality determinations. Instead, the EPA assesses whether the information is customarily and actually treated as private by the reporter and whether the EPA has given an assurance at the time the information was submitted that the information will be kept confidential or not confidential.

*B. Proposed Confidentiality Determinations*

Pursuant to CAA section 114(c), the EPA is proposing to make categorical emission data and confidentiality determinations in advance through this notice and comment rulemaking for the categories of information in these proposed reports under part 99. We describe the proposed emission data categories and confidentiality determinations for the reported information, as well as the basis for such proposed determinations, in this section. This approach is similar to the approach we have taken for the GHGRP under 40 CFR part 98 (see 75 FR 39094, July 7, 2010, and 75 FR 30782, May 26, 2011, for more information).

The determinations the EPA is proposing in this rulemaking, if finalized, would serve as notification of the Agency's decisions concerning: (1) the categories of information the Agency will not treat as confidential because it is emission data; (2) the information that is not emission data but is not entitled to confidential treatment; and (3) the information that the submitter may claim as confidential but will remain subject to the existing 40 CFR part 2 process. In responding to requests for information not determined in this proposal to be emission data or otherwise not entitled to confidential treatment, we propose to apply the default case-by-case process found in 40 CFR part 2.

The emission data and confidentiality determinations proposed in this rulemaking are intended to provide consistency in the treatment of the information collected by the EPA as part of the proposed WEC filings. The EPA anticipates that making these determinations in advance through this rulemaking will provide predictability and transparency for both information requesters and submitters.

The categories of information that we are proposing to determine to be emission data in this action are:

(1) Methane emissions;

(2) Calculation methodology; and

(3) Facility and unit identifier information.

The EPA is proposing to group types of information (data elements) that the Agency is proposing to require WEC obligated parties to submit under part 99 that would be considered emission data into these three categories based on their shared characteristics. For the sake of organization, for any information that logically could be grouped into more than one category, we have chosen to label information as being in just one category where we think it fits best. This approach will reduce redundancy within the categories that could lead to confusion and ensure consistency in the treatment of similar information in the future. We are requesting comment on the following: (1) our proposed categories of emission data; and (2) our placement of each data element under the category proposed.

For reporting elements that the EPA does not designate as "emission data," the EPA is proposing to assess each individual reporting element according to the *Argus Leader* criteria (*i.e.*, whether the information is customarily and actually treated as private by the submitter) and 40 CFR 2.208(a) through (d). Therefore, we are not proposing to establish categories and categorical confidentiality determinations for information that is not "emission data." However, we are proposing descriptions of the type of information that would not be eligible for confidential treatment in 40 CFR 99.13(b), including certain information demonstrating compliance with standards and information that is publicly available. We are also proposing in 40 CFR 99.13(c) through (e) to specify certain data elements and types of information that would be subject to the process for confidentiality determinations in 40 CFR part 2. The proposed provisions in 40 CFR 99.13(b) would establish the proposed confidentiality determinations of the proposed data elements in part 99 and would also provide clarity and ensure consistent treatment of new or substantively revised data elements if the content of the WEC filing is amended in a future rulemaking. Sections IV.B.2. and 3. of this preamble describe these proposed provisions, and our assessment of each individual reporting element that we are proposing is not "emission data." We are requesting comment on the proposed Agency determinations that information described in those sections of the preamble are not entitled to confidential treatment.

1. Emission Data

We are proposing to establish in 40 CFR 99.13(a) that certain categories of information the EPA would collect in the proposed WEC filings are information that meets the regulatory definition of emission data under 40 CFR 2.301(a)(2)(i). The following sections describe the categories of information we are proposing to determine to be emission data, based on application of the definition at 40 CFR 2.301(a)(2)(i) to the shared characteristics of the information in each category and our rationale for each proposed determination.

a. Information Necessary to Determine the Identity, Amount, Frequency, Concentration, or Other Characteristics of Emissions Emitted by the Source

Under 40 CFR 2.301(a)(2)(i)(A), emission data includes "[i]nformation necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing[.]" We are proposing that the following categories of information are emission data under 40 CFR 2.301(a)(2)(i)(A):

(1) Methane emissions; and

(2) Calculation methodology.

*Methane emissions*. Data elements included in the Methane emissions data category are the net WEC emissions, facility waste emissions thresholds, industry segment waste emissions thresholds for each applicable industry segment within the facility (if more than one industry segment applies), and WEC applicable emissions, as well as the quantities of methane emissions that the WEC obligated party calculates should be exempted due to unreasonable delay and wells that were permanently shut-in and abandoned. The EPA proposes to determine that the emissions at each reporting level constitute "emission data." These data elements are information regarding the identity, amount, and frequency of any emission emitted by the WEC applicable facility, and, therefore, they are "emission data." As discussed in section IV.A. of this preamble, in the 1991

EPA notice of policy (56 FR 7042, February 21, 1991), the EPA identified, without attempting to be comprehensive, data elements that the EPA considered to constitute emission data. The 1991 document lists the "Emission type (*e.g.*, the nature of emissions, such as $CO_2$, particulate or a specific toxic compound, and origin of emissions such as process vents, storage tanks or equipment leaks)" and "Emission rate (*e.g.*, the amount released to the atmosphere over time such as kg/yr or lbs/yr)" as data that are not entitled to confidential treatment and are, therefore, releasable to the public. Our proposed determination for this data category is consistent with the 1991 document. It is also consistent with the determination for a similar category in the GHGRP under 40 CFR part 98.

*Calculation methodology*. The data element included in this category is the method used to determine the quantity of methane emissions that the WEC obligated party calculates should be exempt due to an unreasonable permitting delay and the method used to determine the equipment leaks emissions attributable to a plugged well. Most of the necessary calculations in part 99 do not include multiple equations or approaches that could be selected by a WEC obligated party, and in those cases, the calculation methodology used is readily apparent for any WEC obligated party. Calculations for the exemptions for unreasonable delay and plugged wells do include multiple equations that facilities may use under different circumstances.

The EPA proposes to determine that the data elements in the Calculation methodology category are "emission data" under 2.301(a)(2) because they are "information necessary to determine . . . the amount" of emissions emitted by the source. The method used to calculate emissions is emission data under 40 CFR 2.301(a)(2) because it is information necessary for the WEC obligated party to calculate the emissions and for the EPA and the public to verify that an appropriate method was used. As discussed in section IV.A. of this preamble, the 1991 EPA notice of policy provided a list of information that the EPA considered to constitute "emission data" under 40 CFR 2.301(a)(1)(2)(i). That list includes the "emission estimation method (*e.g.*, the method by which an emission estimate has been calculated such as material balance, source

test, use of AP-42 emission factors, etc.),” which is the same type of data element as those that the EPA is proposing to include in this data category. Our proposed determination for this data category is consistent with the 1991 document. It is also consistent with the determination for a similar category in the GHGRP under 40 CFR part 98.

b. Information that is Emission Data Because it Provides a General Description of the Location and/or Nature of the Source to the Extent Necessary to Identify the Source and to Distinguish it from other Sources

Under 40 CFR 2.301(a)(2)(i)(C), emission data includes “a “[g]eneral description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).” We are proposing that the data elements in the Facility and unit identifier information category of information are emission data under 40 CFR 2.301(a)(2)(i)(C).

The proposed part 99 regulations would require WEC obligated parties to report in the WEC filing information needed to identify each facility as well as specific emission units (affected facilities) and/or well-pads associated with an exemption. Facility-identifying information must be reported for all facilities as specified in 40 CFR part 99, subpart A. Affected facility-specific identifying information is required for the regulatory compliance exemption. Well-pad-specific identifying information is reported if required by an applicable exemption for onshore petroleum and natural gas production facilities.

Data elements in this category would include the following data elements required under 40 CFR part 99, subpart A to be included in each annual WEC filing: WEC obligated party company name and address, the name and contact information for the designated representative of WEC obligated party, and a signed and dated certification statement of the accuracy and completeness of the report, which is provided by the designated representative of the owner or operator. The proposed part 99 regulations would also require that the filing include specific

information about each facility covered by the annual WEC filing, including the e-GGRT ID number and the industry segment. For each exemption, the facility and unit identifier information category would include (as applicable) the facility identifier, the well-pad and/or well identifier reported under subpart W (if applicable), other facility or affected facility identifiers used to identify the facility/sources in other EPA systems (specifically, the ICIS-AIR ID or Facility Registry Service (FRS) ID and the EPA Registry ID from the Compliance and Emissions Data Reporting Interface (CEDRI)), emission source-specific methane mitigation activities impacted by an unreasonable permitting delay, and exemption-specific certification statements.

As discussed in section IV.A. of this preamble, emission data must be available to the public and is not entitled to confidential treatment under CAA section 114(c). "Emission data" is defined in 40 CFR 2.301(a)(2)(i)(C) to include "[a] general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources . . . ." Consistent with this definition of emission data, the EPA considers facility and emission unit identifiers to be source information or "information necessary to determine the identity . . . of any emission which has been emitted by the source," and therefore emission data under 40 CFR 2.301(a)(2)(i). Further, 40 CFR 2.301(a)(2)(i)(A) specifies that emission data includes, among other things, "information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source. . . ." The EPA considers the term "identity . . . of any emission" as not simply referring only to the names of the pollutants being emitted, but to also include other identifying information, such as from what and where (*e.g.*, the identity of the emission unit) the pollutants are being emitted.

The 1991 EPA notice of policy (discussed in section IV.A. of this preamble) provided a list of data fields that the EPA considered to be emission data. For example, in the 1991 document, the EPA considered that plant name, address, city, State, zip code, emission point or device description, SIC code, and Source Classification Code (SCC) are emission data.

Therefore, the public has been on notice that the EPA considers many of the data elements in this data category to be emission data and thus not entitled to confidential treatment. The 1991 document also makes clear that the list of data is not comprehensive and that other data might also constitute emission data. This proposed part 99 determination that these data elements are emission data is consistent with the 1991 policy statement, and also consistent with the Facility and unit identifier information category in the GHGRP under 40 CFR part 98.

2. Reported Information that is Never Entitled to Confidential Treatment.

As noted in section IV.B. of this preamble, we are proposing to assess the confidentiality of each individual part 99 reporting element that is not otherwise designated as emission data in this rulemaking according to the *Argus Leader* criteria (*i.e.*, whether the information is customarily and actually treated as private by the submitter) and 40 CFR 2.208(a) through (d). However, in this action we are proposing descriptions of the type of information that would not be eligible for confidential treatment in 40 CFR 99.13(b), in part to establish the proposed confidentiality determinations of the proposed data elements in part 99 but also to provide clarity and consistency in the event that the content of the WEC filings are amended in a future rulemaking. The WEC obligation is calculated by multiplying the net WEC emissions by a set dollar amount, depending on the reporting year. As explained in section IV.B.1.a. of this preamble, the EPA is proposing to determine that the net WEC emissions are emission data. Therefore, we are proposing that the WEC obligation, which is calculated as the net WEC emissions multiplied by a dollar per ton rate that is prescribed in CAA section 136, would not be eligible for confidential treatment.

We are also proposing that certain information considered to be compliance information in part 99, regardless of whether it is or is not designated as emission data, is still not otherwise eligible for confidential treatment. Compliance information collected under part 99 includes information necessary to demonstrate compliance with the eligibility requirements for the exemptions for unreasonable permitting delay, regulatory compliance, and wells that have been

permanently shut-in and plugged. Examples of the information collected include: for the unreasonable delay exemption, the date of the permit request, the estimated date to commence operation if the application had been approved within a set period of months, the first date that offtake to the gathering or transmission infrastructure from the implementation of methane emissions mitigation occurred once the application was approved, the beginning and ending date for which the eligible delay limited the offtake of natural gas associated with methane emissions mitigation activities, information on all applicable local, state, and Federal regulations regarding flaring emissions and the facility's compliance status for each, and other compliance information related to gathering or transmission infrastructure; for the regulatory compliance exemption, copies of reports and other evidence of compliance with NSPS OOOOb or a state, Tribal, or Federal plan under 40 CFR part 62; and for the plugged well exemption, the date a well was permanently shut-in and plugged and the statutory citation for the requirements that were followed for that process. Operating and construction permits are available to the public through the State issuing the permits (as the delegated authority of the EPA), generally either through an online information system or website, or upon request to the state agency issuing the permits. These permits are expected to contain information about the type and size of process equipment operated at a facility, control devices or other measures undertaken to reduce emissions from each process, and the emission standards to which the facility is subject (including Federal standards as well as state or local standards). Reports submitted by owners and operators of facilities subject to NSPS OOOOb or a state, Tribal, or Federal plan under 40 CFR part 62 are available through the EPA's online repository "WebFIRE." See *https://www.epa.gov/electronic-reporting-air-emissions/webfire*. Finally, well-specific information, including age, production rate, and operating status, is publicly available through state oil and gas commissions and/or state databases as well as sources such as Enverus. Because this information is already publicly available, it would not be eligible for confidential treatment.

The EPA is also proposing in 40 CFR 99.13(b)(3) that any other information that has been published and made publicly available, including the publicly available reports submitted under the GHGRP and information on websites, would not be eligible for confidential treatment. Information that is publicly available does not meet the criteria for information entitled to confidential treatment specified in 40 CFR 2.208(c). This proposed paragraph 40 CFR 99.13(b)(3) would specify an additional type of information that would not be eligible for confidential treatment when evaluating the confidentiality of supporting documentation submitted as described in proposed 40 CFR 99.13(c) or (d) (see section IV.B.3. for additional information on supporting documentation).

3. Information for Which the EPA is Not Proposing a Confidentiality Determination

This section describes information for which the EPA is not proposing a confidentiality determination. The EPA would initially treat this information as confidential upon receipt, if the submitter claimed it as such, until a case-by-case determination is made by the Agency under the 40 CFR part 2 process.

We do not expect emission data to be submitted in supporting documentation, but we are proposing that information in supporting documentation as described in proposed 40 CFR 99.13(c) (*i.e.*, information not listed in proposed 40 CFR 98.13(a) or (b) as not eligible for confidential treatment) would be treated as confidential until a case-by-case determination is made under the 40 CFR part 2 process. The EPA is also proposing that information provided in software comments fields as described in proposed 40 CFR 99.13(d) would not be eligible for confidential treatment if it is listed in proposed 40 CFR 98.13(a) or (b) as not eligible for confidential treatment. Otherwise, the EPA would treat the information as confidential until a case-by-case determination is made under the 40 CFR part 2 process, as specified in proposed 40 CFR 99.13(c). The EPA recognizes that supporting documentation and reporter comments may include information that is sensitive or proprietary, such as detailed process designs or site plans. Because the exact nature of this documentation cannot be predicted with certainty, the EPA

proposes to make case-by-case confidentiality determinations under CAA section 114(c) for any supporting documentation or comments claimed confidential by applicants either upon receipt of such information or upon a request for such information after receipt.

*C. Proposed Amendments to 40 CFR Part 2*

As previously discussed, pursuant to CAA section 114(c), the EPA must make available to the public data submitted under part 99, except for data (other than emission data) that are considered confidential under CAA section 114(c). Accordingly, the EPA may release part 99 data without further notice after submission to the EPA in accordance with the EPA's determinations of their confidentiality status in the final rule. Specifically, the EPA may release part 99 data that are determined in the final rule to be emission data or not otherwise entitled to confidential treatment under CAA section 114(c) (*i.e.*, "non-CBI"). For data elements that we determine to be entitled to confidential treatment under CAA section 114(c), the EPA would release or publish such data only if the information can be aggregated in a manner that would protect the confidentiality of these data at the facility level. Existing regulations in 40 CFR part 2, subpart B set forth procedural steps that the EPA must follow before releasing any information, either on the Agency's own initiative or in response to requests made pursuant to FOIA. In particular, the EPA is generally required to make case-by-case confidentiality determinations and to notify individual reporters before disclosing information that businesses have submitted with a confidentiality claim. As discussed in section IV.B of this preamble, in light of the voluminous data the EPA receives under subpart W of part 98 and the multiple procedural steps required under 40 CFR part 2, subpart B, the EPA would not be able to make part 99 data (determined to be emission data or non-CBI) publicly available in a timely fashion if it were required to make separate confidentiality determinations based on each submitter's individual claim of confidentiality.

To facilitate timely release of GHG data collected under part 99 that are emission data or non-CBI, the EPA proposes to amend 40 CFR 2.301, Special rules governing certain information

obtained under the Clean Air Act. Specifically, the EPA is proposing to revise 40 CFR 2.301(d) to specify that the special rules for data submitted under part 98 would also apply to part 99. Under the proposed amendment, the EPA may release part 99 data that are determined to be emission data or information determined to be not entitled to confidential treatment upon finalizing the confidentiality status of these data. Consistent with the 40 CFR part 2 procedures, the approach proposed in this rulemaking would provide the WEC obligated party an opportunity to justify and substantiate any confidentiality claim they may have for the data they are required to submit (except for emission data and other data not entitled to confidential treatment pursuant to CAA section 114(c)). In addition, WEC obligated parties have the benefit of seeing the EPA's rationales and analyses prior to submitting any justification, information that they would not otherwise have under the current 40 CFR part 2 procedures. As more fully explained in section IV.E of this preamble, the WEC obligated party must provide comment explaining why it disagrees with the rationale provided by the EPA for each particular data element it intends to claim confidential and must provide information to explain how the business customarily and actually treats the information as confidential. The EPA will consider comments received on this proposal before finalizing the confidentiality determinations.

The EPA solicits comment on the proposed amendments to 40 CFR 2.301(d), Special rules governing certain information obtained under the CAA for data submitted under part 99.

*D. Proposed Changes to Confidentiality Determinations for Data Elements Reported Under Subpart W*

The industry segment waste emissions thresholds are calculated pursuant to 40 CFR 99.20. Except for facilities in the Offshore Petroleum and Natural Gas Production industry segment or the Onshore Petroleum and Natural Gas Production industry segment that have no natural gas sent to sale, each threshold is calculated by multiplying the specified natural gas throughput for that industry segment by two constant values, the density of methane and the industry segment-specific methane intensity threshold (as summarized in Table 2 of this

preamble). As noted in section IV.B.1.a. of this preamble, the EPA is proposing that the facility waste emissions thresholds and industry segment waste emissions thresholds are emission data and would therefore be made publicly available. For two industry segments, Onshore Natural Gas Processing and Onshore Natural Gas Transmission Compression, throughput quantities similar to those specified in the industry segment waste emissions threshold calculations have historically not been made publicly available under subpart W. However, for WEC applicable facilities, once the industry segment-specific waste emissions thresholds are made publicly available, the throughputs can be calculated based on available information.

Therefore, the EPA is proposing to address confidentiality determinations for two subpart W data elements as part of this rulemaking. For the Onshore Natural Gas Processing industry segment, a new data element was proposed as part of 2023 Subpart W Proposal, the quantity of residue gas leaving that has been processed by the facility and any gas that passes through the facility to sale without being processed by the facility in the calendar year, in thousand standard cubic feet, reported under proposed § 98.236(aa)(3)(ix). The EPA made a final determination in 79 FR 70352 (November 25, 2014) that the quantity of natural gas received at the gas processing plant in the calendar year (reported under 40 CFR 98.236(aa)(3)(i)) and the quantity of processed (residue) gas leaving the gas processing plant (reported under 40 CFR 98.236(aa)(3)(ii)), should be maintained as confidential. As explained in 79 FR 70352 (November 25, 2014), the reporting of this information to the Energy Information Administration is less frequent than required under subpart W, and the EPA had not identified any reliable public sources of the quantity of residue gas produced. In the June 2023 memorandum *Proposed Confidentiality Determinations and Emission Data Designations for Data Elements in Proposed Revisions to the Greenhouse Gas Reporting Rule for Petroleum and Natural Gas Systems* (Docket ID No. EPA-HQ-OAR-2023-0234-0167), the EPA stated that the proposed new data element under 40 CFR 98.236(aa)(3)(ix) would collect similar information to 40 CFR 98.236(aa)(3)(ii). As a result, the EPA proposed to

determine that the information collected under 40 CFR 98.236(aa)(3)(ix) would be eligible for confidential treatment.

However, if the EPA finalizes the proposed determination that the industry segment-specific waste emissions thresholds are emission data, then those industry segment-specific waste emissions thresholds would be made publicly available as emission data. Therefore, the EPA is no longer proposing a confidentiality determination for this throughput quantity data element (*i.e.*, the quantity of residue gas leaving that has been processed by the facility and any gas that passes through the facility to sale without being processed by the facility in the calendar year) under part 98. The confidentiality status of this data element would be evaluated on a case-by-case basis, in light of any publicly available information and in accordance with the existing regulations in 40 CFR part 2, subpart B, upon receipt of a public request for these data elements.

For Onshore Natural Gas Transmission Compression, the EPA previously decided in 2014 not to make a confidentiality determination that would apply for all facilities for 40 CFR 98.236(aa)(4)(i), the quantity of gas transported through a compressor station. In 79 FR 70352 (November 25, 2014), the EPA explained that we proposed that this data element would not be eligible for confidential treatment because natural gas transmission sector is heavily regulated by FERC and state commissions, resulting in a lack of competition between companies. However, we received comments from this industry sector noting that FERC Order 636 had introduced greater competition to this sector and that some companies charge customers less than the FERC approved rates because of competitive market pressures. The commenters indicated that quantity of gas transported through the compressor station would provide information on the quantity of gas transported by a specific pipeline, which may potentially cause competitive harm to some pipeline companies operating in more competitive market areas. Since the determination would

depend on the particular market conditions for each company, the EPA did not make a determination for the data element that would apply for all reporters.[43]

In this rulemaking, the EPA is not proposing to change that previous decision and is still not proposing a confidentiality determination for the quantity of natural gas transported through a compressor station. While the Supreme Court's 2019 decision in *Argus Leader* altered the review criteria for confidentiality determinations from the Agency's 2014 decision, the basis provided by commenters to justify the confidential nature of the information is still relevant. For information pertaining to the quantity of gas transported through a compressor station collected under part 99, the EPA will conduct reviews of any claims made under the existing regulations in 40 CFR part 2, subpart B, upon receipt of a public request for this information. Any such reviews will consider the public availability of the same or similar information, including WEC filings, as part of the determination process.

*E. Request for Comments on Proposed Category Assignments, Confidentiality Determinations, or Reporting Determinations*

This rulemaking provides affected entities that would be subject to part 99, other stakeholders, and the general public an opportunity to provide comment on the proposed amendment to 40 CFR 2.301(d) and the proposed confidentiality determinations for part 99 data, including our proposed categories of emission data and the proposed confidentiality determinations for each data element that is not considered emission data. By proposing emission data and confidentiality determinations prior to data reporting through this proposal and rulemaking process, we are providing potentially affected entities an opportunity to submit comments, particularly comments addressing any data elements not entitled to confidential treatment under this proposal, but which companies customarily and actually treat as private. This opportunity to submit comments is intended to provide reporters with the opportunity to

[43] Prior to *Argus Leader*, the EPA considered whether the business had satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position when evaluating claims of confidentiality.

substantiate their confidentiality claims that would ordinarily be afforded when the EPA considers claims for confidential treatment of information in case-by-case confidentiality determinations under 40 CFR part 2. In addition, the comment period provides an opportunity to respond to the EPA's proposed determinations with more information for the Agency to consider prior to finalization. We will evaluate the comments on our proposed determinations, including claims of confidentiality and information substantiating such claims, before finalizing the confidentiality determinations. Please note that this will be reporters' only opportunity to substantiate a confidentiality claim for data elements included in this proposed rule where information being reported is proposed to be not entitled to confidential treatment. Upon finalizing the confidentiality determinations and reporting determinations of the data elements identified in this proposed rule, the EPA plans to release or withhold these data without further notice in accordance with proposed 40 CFR 2.301(d), which contains special provisions governing the treatment of part 99 data for which confidentiality determinations have been made through rulemaking pursuant to CAA sections 114, 136, and 307(d).

When submitting comments regarding the confidentiality determinations we are proposing in this action, please identify each individual proposed data element on which you are commenting and whether you consider the element to be confidential or do not consider to be "emission data" in your comments. If the data element has been designated as "emission data," please explain why you do not believe the information meets the definition of "emission data" as defined in 40 CFR 2.301(a)(2)(i). If the data has not been designated as "emission data" and is proposed to not be entitled to confidential treatment, please explain specifically how the data element is commercial or financial information that is both customarily and actually treated as private. Particularly describe the measures currently taken to keep the data confidential and how that information has been customarily treated by your company and/or business sector in the past. This explanation is based on the requirements for confidential treatment set forth in *Argus Leader*.

Members of the public may also discuss how this data element may be different from or similar to data that are already publicly available, including data already collected and published annually by the GHGRP, as applicable. Please submit information identifying any publicly available sources of information containing the specific data elements in question. Data that are already available through other sources would likely be found not to qualify for confidential treatment. In your comments, please identify the manner and location in which each specific data element you identify is publicly available, including a citation. If the data are physically published, such as in a book, industry trade publication, or Federal agency publication, provide the title, volume number (if applicable), author(s), publisher, publication date, and International Standard Book Number (ISBN) or other identifier. For data published on a website, provide the address of the website, the date you last visited the website and identify the website publisher and content author. Please avoid conclusory and unsubstantiated statements, or general assertions regarding the confidential nature of the information.

In addition to soliciting comment on our proposed confidentiality designations and proposed amendments to 40 CFR 2.301, we are also soliciting comment on the following specific issues relevant to the proposed confidentiality determinations:

*"Emission Data" determination*. As previously discussed, "emission data" cannot be kept confidential per CAA section 114. The EPA is seeking comment on the part 99 data elements proposed to be considered "emission data." Please specify exactly what part 99 data you think should be considered emission data, describe what part 99 data you think should not be emission data and why (and whether such non-emission data should be considered confidential and why), and clearly explain how the suggested definition of "emission data" would be consistent with the "necessary to determine" clause in 40 CFR 2.301, as well as with the purpose behind the statutory language.

*Individual determinations*. The EPA is proposing confidentiality determinations by data element for the majority of the data elements in part 99. We are soliciting comment on whether

there are data elements proposed to be included in 40 CFR 99.13(a) and (b) for which we should not finalize a confidentiality determination for the data element as not eligible for confidential treatment and instead make no determination for the data element, such that the confidentiality status of this data element would be evaluated on a case-by-case basis, in light of any publicly available information and in accordance with the existing CBI regulations in 40 CFR part 2, subpart B, upon receipt of a public request for these data elements. If respondents believe that EPA should not make a determination for a specific data element, please describe specifics of when a case-by-case determination would be necessary.

*Changes to determinations for subpart W throughputs*. We request comment on the approach for the subpart W data elements specified in section IV.D. of this preamble. In particular, we request comment on no longer proposing a confidentiality determination for the quantity of residue gas leaving that has been processed by the facility and any gas that passes through the facility to sale without being processed by the facility in the calendar year, in thousand standard cubic feet, reported under proposed 40 CFR 98.236(aa)(3)(ix). We also request comment on the proposal to continue not making a confidentiality determination for the quantity of natural gas transported through a compressor station under 40 CFR 98.236(aa)(4)(i), as well as the criteria that should be used to conduct a case-by-case evaluation of the confidentiality of the data. We also request comment on whether these two data elements are customarily and actually treated as confidential, and if so, what approaches the EPA could use to treat the information as confidential while still making all emission data publicly available, as required by CAA section 114(c).

## V. Impacts of the Proposed Amendments

In accordance with the requirements of Executive Order 12866, the EPA projected the emissions reductions, costs, benefits, and transfer payments that may result from this proposed action if finalized as proposed. These results are presented in detail in the *Regulatory Impact Analysis of the Proposed Waste Emission Charge* (RIA) accompanying this proposal developed

in response to Executive Order 12866 and available in the docket to this rulemaking, Docket ID No. EPA-HQ-OAR-2023-0434. This section provides a brief summary of the RIA.

The WEC does not directly require emissions reductions from applicable facilities or emissions sources. However, by imposing a charge on methane emissions that exceed waste emissions thresholds, oil and natural gas facilities subject to the WEC are expected to perform methane mitigation actions and make operational changes where the costs of those changes are less than the WEC payments that could be avoided by reducing methane emissions. In addition, because VOC and HAP emissions are emitted along with methane from oil and natural gas industry activities, reductions in methane emissions as a result of the WEC also result in co-reductions of VOC and HAP emissions.

The RIA accompanying this proposal analyzes emissions changes and economic impacts of the WEC that arise through two pathways: 1) through the application of cost-effective methane mitigation technologies, and 2) through changes in oil and natural gas production and prices resulting from the WEC and associated mitigation responses. The analysis of methane mitigation is based on bottom-up engineering cost and mitigation potential information for a range of methane mitigation technologies. Application of methane mitigation technologies reduce WEC payments for WEC obligated parties by reducing methane emissions compared to a baseline without additional methane mitigation actions. The analysis assumes that methane mitigation is implemented where the engineering control costs are less than the avoided WEC payments for a particular mitigation technology.

Additionally, oil and natural gas firms may change their production and operational decisions in response to the WEC. This potential impact is modeled using a partial equilibrium model of the crude oil and natural gas markets. The total cost of methane mitigation and WEC payments is added as an increase to production costs, resulting in changes in equilibrium production of oil and natural gas and associated emissions. Projected WEC payments are

estimated after methane emissions reductions from both methane mitigation and economic impacts are accounted for.

Using emissions reported to subpart W for RY2021 as an illustrative example, Table 1-1 of the RIA shows that the WEC would be imposed on less than 15 percent of national methane emissions from petroleum and natural gas systems. Total methane emissions reported to subpart W are significantly less than national methane emissions from the U.S. Greenhouse Gas Inventory. WEC-applicable facilities are the subset of GHGRP facilities that report at least 25,000 mt $CO_2e$ to subpart W industry segments subject to the WEC. It is also important to note that the WEC would only apply to methane emissions that are above the emissions threshold, not for all emissions from WEC-applicable facilities. The WEC has exemptions related to regulatory compliance, emissions from plugged wells, and unreasonable delay in environmental permitting, although these provisions do not impact the illustrative results in Table 1-1 of the RIA. Finally, emissions subject to WEC accounts for netting of emissions between facilities. Under the proposed WEC, facilities with emissions below their emissions threshold may reduce emissions subject to the WEC at other facilities with emissions above the emissions threshold where those facilities are under common ownership or control.

The benefit-cost analysis contained in the RIA accompanying this rulemaking for the WEC considers the potential benefits and costs of the WEC arising from cost-effective mitigation actions under the WEC as well as the potential transfers from affected operators to the government in payments. Costs include engineering costs for methane mitigation actions and costs resulting from production changes in oil and gas energy markets under this rule. While the EPA expects a range of health and environmental benefits from reductions in methane, VOC, and HAP emissions under the WEC, the monetized benefits of the rule are limited to the estimated climate benefits from projected methane emissions reductions. These benefits are based on the social cost of greenhouse gases (SC-GHG). A screening-level analysis of ozone-related benefits from projected VOC reductions can be found in Appendix A of the RIA.

However, these estimates are treated as illustrative and are not included in the quantified benefit-cost comparisons in the RIA.

The EPA estimates that this action will result in cumulative emissions reductions of 960 thousand metric tons of methane over the 2024 to 2035 period. These reductions represent about 33 percent of methane emissions that would be subject to the WEC before accounting for the adoption of cost-effective emission reduction technologies. Virtually all the reduced emissions result from mitigation activities undertaken by industry to reduce WEC payments. Less than one percent of reductions are associated with decreased production activity in the oil and gas sector resulting from the proposed rule. In addition to methane emissions reductions, the WEC is estimated to result in reductions of 140 thousand metric tons of VOC and five thousand metric tons of HAP.

The WEC has important interactions and is designed to work hand-in-hand with the NSPS and EG for the Oil and Natural Gas Sector by accelerating the adoption of cost-effective methane mitigation technologies, including those that would eventually be required under the NSPS or EG. The annual projected emissions reductions, costs, and WEC obligations are significantly affected by these interactions.

The EPA proposed updates to the Oil and Gas NSPS OOOOb/EG OOOOc in 2021, published a supplemental proposal in 2022, and finalized in December 2023. In addition to requirements already in place, these rules include standards for many of the major sources of methane emissions in the oil and natural gas industry. To avoid double counting of benefits and costs, the baseline for this proposal includes reductions resulting from the NSPS OOOOb/EG OOOOc based on information from the 2023 Final RIA. Specifically, that analysis showed deep reductions in methane emissions beginning to take effect in 2028. As facilities implement emission controls required by the NSPS and EG, emissions subject to the WEC decline.

The second interaction between the WEC and NSPS OOOOb/EG OOOOc is the regulatory compliance exemption provision of the WEC. Under this provision, when certain

conditions are met with respect to the implementation of the Oil and Gas NSPS OOOOb/EG OOOOc, applicable facilities in compliance with their applicable methane emissions requirements are exempted from the WEC. The analysis in the RIA assumes that the regulatory compliance exemption takes effect in 2027, such that in 2027 and later, facilities in the industry segments subject to requirements under the NSPS OOOOb/EG OOOOc do not owe WEC payments.

Climate benefits associated with this proposed rule are the monetized value of GHG reductions using the SC-GHG, which calculates the avoided climate related damages from reducing GHG emissions. Methane is the principal component of natural gas. As discussed in section I.C.1. of this preamble, methane is also a potent GHG that, once emitted into the atmosphere, absorbs terrestrial infrared radiation, which in turn contributes to increased global warming and continuing climate change.

This proposed rulemaking is projected to reduce VOC emissions, which are a precursor to ozone. Ozone is not generally emitted directly into the atmosphere but is created when its two primary precursors, VOC and oxides of nitrogen ($NO_X$), react in the atmosphere in the presence of sunlight. Emissions reductions under the WEC may decrease ozone formation, human exposure to ozone, and the incidence of ozone-related health effects. VOC emissions are also a precursor to $PM_{2.5}$, so VOC reductions may also decrease human exposure to $PM_{2.5}$ and the incidence of $PM_{2.5}$- related health effects.

Available emissions data show that several different HAP are emitted from oil and natural gas operations. Emissions of eight HAP make up a large percentage of the total HAP emissions by mass from the oil and natural gas sector: toluene, hexane, benzene, xylenes (mixed), ethylene glycol, methanol, ethyl benzene, and 2,2,4- trimethylpentane.[44] Reductions of HAP emissions under the WEC may reduce exposure to these and other HAP.

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[44] U.S. EPA. The Benefits and Costs of the Clean Air Act from 1990 to 2020. Washington, DC. Retrieved from *https://www.epa.gov/sites/production/files/2015-07/documents/fullreport_rev_a.pdf*.

In section 9.3 of the RIA, the EPA identifies existing potential environmental justice issues for the communities in counties that have emissions sources that are expected to owe the WEC charge before accounting for mitigation actions and thus may be positively affected by emissions changes under the proposal. Compared to the national average, these communities include a higher percentage of individuals who identify as racial and ethnic minorities, have lower average incomes, and have slightly elevated health risks associated with various air emissions. Reductions in VOC and HAP emissions as a result of the WEC are expected to benefit communities in these counties. Because the WEC does not directly require emissions reductions, the EPA has not projected specific locations where emissions reductions might occur. In addition, detailed proximity analysis is infeasible because the emissions affected by the WEC occur at hundreds of thousands of locations.

The total cost of the proposed rule includes the engineering costs for methane mitigation actions implemented by the oil and natural gas industry in order to avoid or reduce WEC obligations. This includes the initial capital costs required to implement and install the specific mitigation technology. In addition, for mitigation technologies with expected lifetimes greater than one-year, annual recurring operations and maintenance costs, which include labor, energy and materials, are also incorporated. Finally, the total mitigation costs also include the avoided cost of natural gas losses.

The social cost of energy market impacts is the loss in consumer and producer surplus value from changes in natural gas market production and prices. The economic impacts analysis uses a partial equilibrium model and estimates that the impact of the gas market is minimal, with the largest impact occurring in the first few years with a price increase of less than 0.1 percent and a quantity reduction of less than 0.1 percent.

Table 5 presents results of the benefit-cost analysis for the proposed WEC. It presents the present value (PV) and equivalent annual value (EAV), estimated using discount rates of 2, 3, and 7 percent, of the changes in quantified benefits, costs, and net benefits relative to the

baseline.[45] These values reflect an analytical time horizon of 2024 to 2035, are discounted to 2023, and are presented in 2019 constant dollars. The table includes consideration of the non-monetized benefits associated with the emissions reductions projected under this proposal.

**Table 4. Projected Emissions Reductions Under the Proposed Rule, 2024-2035 Total**

| Pollutant | Emissions Reductions (2024-2035 Total) |
|---|---|
| Methane (thousand metric tons)[a] | 960 |
| VOC (thousand metric tons) | 140 |
| Hazardous Air Pollutant (thousand short tons) | 5 |
| Methane (million metric tons $CO_2e$)[b] | 27 |

[a] To convert from metric tons to short tons, multiply the short tons by 1.102. Alternatively, to convert from short tons to metric tons, multiply the short tons by 0.907.

[b] Carbon dioxide equivalent ($CO_2e$). Calculated using a global warming potential of 28.

**Table 5. Benefits, Costs, and Net Benefits of the Proposed Rule, 2024 Through 2035 (dollar estimates in millions of 2019 dollars)** [a]

| | 2 Percent Near-Term Ramsey Discount Rate | | | | | |
|---|---|---|---|---|---|---|
| | Present Value | Equivalent Annual Value | Present Value | Equivalent Annual Value | Present Value | Equivalent Annual Value |
| Climate Benefits[b] | $1,900 | $180 | $1,900 | $180 | $1,900 | $180 |
| | 2 Percent Discount Rate | | 3 Percent Discount Rate | | 7 Percent Discount Rate | |

[45] Monetized climate effects are presented under a 2 percent near-term Ramsey discount rate, consistent with EPA's updated estimates of the SC-GHG. The 2003 version of OMB's Circular A-4 had generally recommended 3 percent and 7 percent as default discount rates for costs and benefits, though as part of the Interagency Working Group on the Social Cost of Greenhouse Gases, OMB had also long recognized that climate effects should be discounted only at appropriate consumption-based discount rates. OMB finalized an update to Circular A-4 in 2023, in which it recommended the general application of a 2.0 percent discount rate to costs and benefits (subject to regular updates), as well as the consideration of the shadow price of capital when costs or benefits are likely to accrue to capital. Because the SC-GHG estimates reflect net climate change damages in terms of reduced consumption (or monetary consumption equivalents), the use of the discount rate estimated using the average return on capital (7 percent in OMB Circular A-4 (2003)) to discount damages estimated in terms of reduced consumption would inappropriately underestimate the impacts of climate change for the purposes of estimating the SC-GHG. See section 6.1 of the RIA for more discussion.

| | Present Value | Equivalent Annual Value | Present Value | Equivalent Annual Value | Present Value | Equivalent Annual Value |
|---|---|---|---|---|---|---|
| Total Social Costs | $390 | $37 | $380 | $38 | $340 | $43 |
| *Cost of Methane Mitigation* | $360 | $34 | $350 | $35 | $320 | $40 |
| *Cost of Energy Market Impacts* | $30 | $3 | $29 | $3 | $26 | $3 |
| Net Benefits | $1,500 | $140 | $1,500 | $140 | $1,600 | $140 |
| Non-Monetized Benefits | Climate and ozone health benefits from reducing 960 thousand metric tons of methane from 2024 to 2035 | | | | | |
| | $PM_{2.5}$ and ozone health benefits from reducing 140 thousand metric tons of VOC from 2024 to 2035[c] | | | | | |
| | HAP benefits from reducing 5 thousand metric tons of HAP from 2024 to 2035 | | | | | |
| | Visibility benefits | | | | | |
| | Reduced vegetation effects | | | | | |
| | | | | | | |

[a] Values rounded to two significant figures. Totals may not appear to add correctly due to rounding.

[b] Climate benefits are based on reductions in methane emissions and are calculated using three different estimates of the social cost of methane (SC-$CH_4$) (under 1.5 percent, 2.0 percent, and 2.5 percent near-term Ramsey discount rates). For the presentational purposes of this table, we show the climate benefits associated with the SC-$CH_4$ at the 2 percent near-term Ramsey discount rate. Please see Table 6-5 of the RIA for the full range of monetized climate benefits estimates.

[c] A screening-level analysis of ozone benefits from VOC reductions can be found in Appendix A of the RIA.

WEC payments are transfers and do not affect total net benefits to society as a whole because payments by oil and natural gas operators are offset by receipts by the government. Therefore, from a net-benefit accounting perspective, transfers are considered separately from costs and benefits (and are therefore not included in Table 5). As explained further in section 2.7 of the RIA, the approach taken here is in line with OMB guidance and the approach taken for RIAs for other rules impacting payments to the government, such as the Bureau of Land Management (BLM)'s waste prevention rule.

One of the reasons that transfers are not considered costs is because they represent payments to the U.S. Treasury that do not affect total resources available to society. Payments to the U.S. Treasury can then be used to fund other programs, and the pairing of revenue collection (e.g., the WEC payments) with commensurate expenditures (e.g., financial assistance programs) by the federal government can be designed to be revenue neutral. The Methane Emission Reduction Program created under CAA section 136 includes both collection and expenditure components. In addition to establishing the WEC, another key purpose of CAA section 136 is to encourage the development of innovative technologies in the detection and mitigation of methane emissions. See 168 Cong. Rec. E869 (August 23, 2022) (statement of Rep. Frank Pallone). CAA section 136(a) and (b) provides $1.55 billion to, among other things, help finance the early adoption of emissions reduction methodologies and technologies and to support monitoring of methane emissions. These incentives for methane mitigation and monitoring complement the WEC.

The WEC has the effect of better aligning the economic incentives of oil and natural gas companies with the costs and benefits faced by society from oil and gas activities. In the baseline scenario the environmental damages resulting from methane emissions from the oil and gas sector are a negative externality spread across society as a whole. Under the WEC, this negative externality is internalized, oil and gas companies are required to make WEC payments in proportion to the climate damages of methane emissions subject to the WEC. Alternatively, firms can avoid making WEC payments by mitigating their emissions generating climate benefits associated with the amount of mitigation.

Table 6 provides details of the calculation steps used to estimate projected WEC obligations and climate damages based on projected emission subject to WEC. In order to compare projected WEC payments to climate damages from emissions subject to the WEC, WEC payments are converted from nominal dollars to 2019 constant dollars using a chain-weighted GDP price index from the 2023 Annual Energy Outlook. Projected WEC payments

after accounting for methane mitigation and energy market impacts are estimated to be about $750 million nominal dollars in 2024, and then drop significantly as the regulatory compliance exemption takes effect in 2027.

**Table 6. Benefits, Costs, and Net Benefits of the Proposed Rule, 2024 Through 2035 (dollar estimates in millions of 2019 dollars)** [a]

| Year | Methane Emissions Subject to WEC in Policy Scenario (thousand metric tons) | Charge Specified by Congress (nominal $ per metric ton) | WEC Payments in Policy Scenario (million nominal $) | WEC Payments in Policy Scenario (million 2019$) | $SC\text{-}CH_4$ Values at 2% Discount Rate (2019$ per metric ton) | Climate Damages from Emissions Subject to WEC (million 2019$)[a] |
|---|---|---|---|---|---|---|
| 2024 | 830 | $900 | $750 | $620 | $1,900 | $1,600 |
| 2025 | 650 | $1,200 | $770 | $630 | $2,000 | $1,300 |
| 2026 | 430 | $1,500 | $640 | $510 | $2,100 | $890 |
| 2027 | 9 | $1,500 | $13 | $10 | $2,200 | $18 |
| 2028 | 9 | $1,500 | $13 | $10 | $2,200 | $19 |
| 2029 | 9 | $1,500 | $13 | $10 | $2,300 | $20 |
| 2030 | 9 | $1,500 | $13 | $9 | $2,400 | $20 |
| 2031 | 9 | $1,500 | $13 | $9 | $2,500 | $21 |
| 2032 | 9 | $1,500 | $13 | $9 | $2,500 | $21 |
| 2033 | 8 | $1,500 | $13 | $9 | $2,600 | $21 |
| 2034 | 8 | $1,500 | $13 | $8 | $2,700 | $21 |
| 2035 | 8 | $1,500 | $13 | $8 | $2,800 | $21 |
| Total 2024-2035 | 2,000 | - | $2,300 | $1,800 | - | $4,000 |

[a] Climate damages are based on remaining methane emissions subject to WEC after accounting for emissions reductions and are calculated using three different estimates of the social cost of methane ($SC\text{-}CH_4$) (under 1.5 percent, 2.0 percent, and 2.5 percent near-term Ramsey discount rates). For the presentational purposes of this table, we show the climate benefits associated with the $SC\text{-}CH_4$ at the 2 percent near-term Ramsey discount rate.

## VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders*.

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review*

This action is a "significant regulatory action" as defined under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket for this rulemaking, Docket ID No. EPA-HQ-OAR-2023-0434. The EPA prepared an analysis of the potential impacts associated with this action. This analysis**,** *Regulatory Impact Analysis of the Proposed Waste Emission Charge***,** is also available in the docket to this rulemaking and is briefly summarized in section V. of this preamble.

### *B. Paperwork Reduction Act (PRA)*

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2787.01. You can find a copy of the ICR in the docket for this rule, Docket ID No. EPA-HQ-OAR-2023-0434, and it is briefly summarized here.

The EPA estimates that the proposed rule would result in an increase in burden. The burden associated with the proposed rule is due to reporting and recordkeeping requirements in the proposed rule.

The respondent reporting burden for this collection of information is estimated to be an annual average of 12,799 hours and $1,700,304 over the 3 years covered by this information

collection, which includes an annual average of $1,669,752 in labor costs, $0 in operation and maintenance costs, and $30,552 in capital costs. The annual average incremental burden to the EPA for this period is anticipated at 31,200 hours and $5,670,955 ($2023) over the 3 years covered by this information collection, which includes an annual average of $2,004,288 in labor costs and $3,666,667 in non-labor costs.

*Respondents/affected entities*: Owners and operators of petroleum and natural gas systems that must submit a WEC filing to the EPA to comply with proposed 40 CFR part 99.

*Respondent's obligation to respond*: The respondent's obligation to respond is mandatory under the authority provided in CAA sections 114 and 136.

*Estimated number of respondents*: 536.

*Frequency of response*: Annually.

*Total estimated burden*: 12,799 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost*: $1.7 million (per year), includes $30,552 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *https://www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting "Currently under Review – Open for Public Comments" or by using the search function. OMB must receive comments no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. The EPA will respond to any ICR-related comments in the final rule.

*C. Regulatory Flexibility Act (RFA)*

I certify that this proposed action would not have a significant economic impact on a substantial number of small entities under the RFA. The small entities that would be subject to the proposed requirements of this action are small businesses in the petroleum and natural gas industry. Small entities include small businesses, small organizations, and small governmental jurisdictions. The EPA has determined that some small entities are affected because their processes emit methane that must be reported under subpart W and thus may be subject to WEC.

To evaluate whether this proposed rule would have a significant economic impact on a substantial number of small entities, the EPA conducted a small entity analysis that evaluated the costs of the proposed rule on small entities identified in the reporting year (RY) 2021 subpart W dataset. The EPA used reported facility-to-parent company and facility-to-owner or operator data to link facilities to WEC obligated parties. The EPA then reviewed the available RY 2021 data for the WEC obligated parties of subpart W facilities to determine whether the reporters were part of a small entity and whether the annualized costs of the proposal would have a significant impact on a substantial number of small entities. The number of small entities potentially affected by the proposed WEC regulation were estimated based on the information collected for 472 WEC obligated parties. Of these, 439 were identified as small entities. Although the screening analysis suggests that some small entities may have cost-to-revenue ratios that exceed 3 percent (approximately 17 percent), the EPA's evaluation of the impacts to small entities relied on several methodologies involving conservative assumptions. For example, the identification and classification of subpart W parent entities reporting under more than one NAICS code resulted in a designation of "small" based on whether the business information available met the SBA size classification threshold for a single NAICS code. In addition to the conservative assumptions, there were further mitigating factors not included in the screening analysis that would likely significantly reduce compliance costs, and, as a result, cost-to-revenue-ratios. For example, the compliance cost estimate used only the defined WEC cost and did not account for

early adoption of mitigation measures that could lower an entity's emissions below the threshold and therefore result in no WEC charge. Details of this analysis are presented in the *Regulatory Impact Analysis of the Proposed Waste Emissions Charge*, available in the docket for this rulemaking. The cumulative effect of the mitigating factors and conservative assumptions used in the screening analysis indicates that, overall, the proposed rule would not likely have a significant impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act (UMRA)*

This action contains a federal mandate under UMRA, 2 U.S.C. 1531–1538, that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, the EPA has prepared under section 202 of the UMRA a written statement of the benefit-cost analysis, which can be found in Section V of this preamble and in the *Regulatory Impact Analysis of the Proposed Waste Emissions Charge* (RIA)*,* available in the docket for this rulemaking. The proposed action in part implements mandate(s) specifically and explicitly set forth in CAA section 136.

The applicability, magnitude of charge, methane emissions subject to charge, and exemptions from charge for the WEC program are established by CAA section 136(c) through (g). Given that this framework is required by statute, it is not possible for EPA to consider regulatory alternatives that are inconsistent with these elements. As such, to evaluate the benefits and costs of the proposed rule, in the RIA accompanying this rulemaking two scenarios were evaluated: a baseline scenario (*i.e.,* not including the effects of the WEC program) and a policy scenario inclusive of the costs, benefits, and transfers projected under the proposed rule. This action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule does not apply to governmental entities unless the government entity owns a facility in the applicable petroleum and gas industry segments and reports more 25,000 mt $CO_2e$ to subpart W of the GHGRP. It would not impose any implementation responsibilities on state,

local, or tribal governments and it is not expected to increase the cost of existing regulatory programs managed by those governments. Thus, the impact on governments affected by the proposed rule is expected to be minimal.

However, consistent with the EPA's policy to promote communications between the EPA and state and local governments, the EPA sought comments from small governments concerning the regulatory requirements that might significantly or uniquely affect them in the development of this proposed rule. Specifically, the EPA previously published a Request for Information (RFI) seeking public comment in a non-regulatory docket to collect responses to a range of questions related to the Methane Emissions Reduction Program, including related to implementation of the WEC (see Docket ID No. EPA-HQ-OAR-2022-0875). The EPA received five comments from government entities related to implementation of the WEC; these comments were considered during the development of the proposed rule. The EPA continues to be interested in the potential impacts of the proposed rule amendments on state, local, or tribal governments and welcomes comments on issues related to such impacts.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This proposed rule will not apply to governmental entities unless the government entity owns a facility in the applicable petroleum and gas industry segments that and reports more 25,000 mt $CO_2e$ to subpart W of the GHGRP. Therefore, the EPA anticipates relatively few state or local government facilities will be affected. However, consistent with the EPA's policy to promote communications between EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This proposed regulation will apply directly to petroleum and natural gas facilities that may be owned by tribal governments. However, it will generally only have tribal implications where the tribal entity owns a facility in an applicable industry segment that emits GHGs above threshold levels; therefore, relatively few tribal facilities will be affected. Of the subpart W facilities currently reporting to the GHGRP in RY2021, we identified four facilities currently reporting to part 98, subpart W that are owned or partially owned by one tribal parent company. Based on RY2021 data, all four facilities would be WEC applicable facilities, and the WEC applicable emissions (without consideration of exemptions) for the individual facilities would range from less than 0 mt $CH_4$ for one facility, up to about 3,500 mt $CH_4$ for the largest facility (which corresponds to a WEC obligation of $3.1 million). Note that one of the facilities is within the onshore natural gas processing sector, and thus, this calculation utilizes proxy data of CBI throughput, which may not reflect the actual facility throughput and resulting WEC applicable emissions. Each of the four facilities has a different owner or operator or combination of owners or operators, so the tribe likely would not be the WEC obligated party for all four facilities. These estimates do not consider any exemptions that might apply for the three facilities with emissions greater than the facility waste emissions threshold.

In addition to tribes that would be directly impacted by the WEC due to owning a facility subject to the charge, the EPA anticipates that tribes could be impacted in cases where facilities subject to the charge are located in Indian country. For example, the EPA reviewed the location of the production wells reported by facilities under the Onshore Petroleum and Natural Gas Production industry segment and found production wells reported under subpart W on lands associated with approximately 20 tribes. Therefore, although the EPA anticipates that at most only one tribe may be designated as a WEC obligated party and has the potential to be subject to

the WEC, the EPA has sought opportunities to provide information to tribal governments and representatives during rule development. On November 4, 2022, the EPA published an RFI seeking public comment on a range of questions related to the Methane Emissions Reduction Program, including implementation of the WEC (see Docket ID No. EPA-HQ-OAR-2022-0875). Further, consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA specifically solicits comment on this proposed action from Tribal officials. The EPA will engage in consultation with Tribal officials during the development of this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This proposed action would not establish an environmental standard intended to mitigate health or safety risks and does not focus on information-gathering actions concerned with children's health. Therefore, this proposed action is not subject to Executive Order 13045. For the same reasons, the EPA's Policy on Children's Health also does not apply.

Although this proposed action does not establish an environmental standard applicable to methane emissions or mandate methane emissions reductions, it is expected that the WEC implemented under this proposed action would result in elective methane mitigation actions by applicable facilities in the oil and gas industry in order to reduce, or eliminate, the imposition of charges. As such, the EPA believes that the impacts of this proposed action would result in a reduction in an environmental health or safety risk that has a disproportionate effect on children. Accordingly, the Agency has elected to evaluate the environmental health and welfare effects of climate change on children. Greenhouse gases, including methane, contribute to climate change and are emitted in significant quantities by the oil and gas industry. The EPA believes that the implementation of the WEC in this action, if finalized, would improve children's health as a

result of methane mitigation actions and operational changes taken by oil and gas applicable facilities to avoid the imposition of WEC. The assessment literature cited in the EPA's 2009 Endangerment Findings concluded that certain populations and life stages, including children, the elderly, and the poor, are most vulnerable to climate-related health effects (74 FR 66524, December 15, 2009). The assessment literature since 2009 strengthens these conclusions by providing more detailed findings regarding these groups' vulnerabilities and the projected impacts they may experience (*e.g.*, the 2016 Climate and Health Assessment).[46] These assessments describe how children's unique physiological and developmental factors contribute to making them particularly vulnerable to climate change. Impacts to children are expected from heat waves, air pollution, infectious and waterborne illnesses resulting in physical and mental health effects from extreme weather events. In addition, children are among those especially susceptible to most allergic diseases, as well as health effects associated with storms and floods. Additional health concerns may arise in low-income households, especially those with children, if climate change reduces food availability and increases prices, leading to food insecurity within households.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This proposed action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. To make this determination, we compare the projected change in crude oil and natural gas costs and production to guidance articulated in a January 13, 2021 OMB memorandum "Furthering Compliance with Executive Order 13211, Titled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.""[47] With respect to increases in the

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[46] USGCRP, 2016: *The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment*. Crimmins, A., J. Balbus, J.L. Gamble, C.B. Beard, J.E. Bell, D. Dodgen, R.J. Eisen, N. Fann, M.D. Hawkins, S.C. Herring, L. Jantarasami, D.M. Mills, S. Saha, M.C. Sarofim, J. Trtanj, and L. Ziska, Eds. U.S. Global Change Research Program, Washington, DC, 312 pp. *https://dx.doi.org/10.7930/J0R49NQX*.

[47] See *https://www.whitehouse.gov/wp-content/uploads/2021/01/M-21-12.pdf*.

cost of energy production or distribution, the guidance indicates that a regulatory action produces a significant adverse effect if it is expected to increase costs in excess of one percent. With respect to crude oil production, the guidance indicates that a regulatory action produces a significant adverse effect if it is expected to produce reductions in crude oil supply, in excess of 20 million barrels per year. With respect to natural gas production, the guidance indicates that a regulatory action produces a significant adverse effect if it reduces natural gas production in excess of 40 million thousand cubic feet (mcf) per year.[48] The economic impacts analysis conducted as part of the RIA accompanying this rulemaking estimated a maximum impact on the gas market of a 0.05 percent price increase and a 0.03 percent decrease in production. The highest impact year is estimated to be in 2026, with a production decrease of 10.7 million mcf of natural gas. The analysis projected a maximum impact on the oil market of 0.04 percent price increase and a 0.03 percent decrease in production. The highest impact year is estimated to be in 2026, with an estimated production decrease of 1.27 million barrels of oil. These impacts are substantially below the thresholds available in OMB memoranda as measures of a significant adverse effect on the energy supply. Further discussion of this analysis is available in the *Regulatory Impact Analysis of the Proposed Waste Emissions Charge,* available in the docket for this rulemaking.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

[48] The 2021 E.O. 13211 guidance memo states that the natural gas production decrease that indicates the regulatory action is a significant energy action is 40 mcf per year. Because this is a relatively small amount of natural gas and previous guidance from 2001 indicated a threshold of 25 million Mcf, we assume the 2021 memo was intended to establish 40 million mcf as the indicator of an adverse energy effect. See *https://www.whitehouse.gov/wp-content/uploads/2017/11/2001-M-01-27-Guidance-for-Implementing-E.O.-13211.pdf*.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing our Nation's Commitment to Environmental Justice for All*

The EPA believes that the emissions reductions likely to result from this rule will improve health and environmental outcomes for communities facing disproportionate and adverse human health effects from the pollution subject to the waste emissions charge, including environmental justice communities. The EPA proposes, however, to determine that Executive Order 12898 does not apply to this rulemaking because it is a rule that addresses information collection, reporting procedures, and imposition of the waste emission charge directive of CAA section 136. Although the EPA anticipates a reduction in methane and associated co-pollutant emissions from this action, if finalized, these reductions are not the result of emissions standards or mandated reductions.

Although this regulation does not require action that will directly affect human health or environmental conditions, the EPA has identified and addressed environmental justice concerns by electing to conduct a qualitative assessment of the environmental justice outcomes from the proposed action. The EPA believes the human health or environmental conditions that exist prior to this proposed action would result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations, and/or Indigenous peoples. The EPA identified 563 counties where Onshore Petroleum and Natural Gas Production and/or Onshore Petroleum and Natural Gas Gathering and Boosting facilities with emissions that may be above the waste emissions threshold and therefore subject to the WEC operated in 2021. These are the counties where emissions might change due to the WEC. The EPA found that there are generally higher percentages of low income and members of minority groups in these communities who may experience higher than average health risks. The EPA believes that in aggregate the proposed action will result in reduction of methane,

hazardous air pollutants, and volatile organic compounds, and, generally, this result will improve environmental justice outcomes.

The information supporting this Executive Order review is contained in the *Regulatory Impact Analysis of the Proposed Waste Emissions Charge*, available in the docket for this rulemaking.

*K. Determination under CAA Section 307(d)*

Pursuant to CAA section 307(d)(1)(V), the Administrator determines that this proposed action is subject to the provisions of CAA section 307(d). Section 307(d)(1)(V) of the CAA provides that the provisions of CAA section 307(d) apply to "such other actions as the Administrator may determine."

**List of Subjects**

*40 CFR Part 2*

Administrative practice and procedure, Confidential business information, Courts, Environmental protection, Freedom of information, Government employees.

*40 CFR Part 99*

Environmental protection, Greenhouse gases, Natural gas, Petroleum, Reporting and recordkeeping requirements, Penalties.

**Michael S. Regan**,
*Administrator*.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend title 40, chapter I, of the Code of Federal Regulations as follows:

**PART 2—PUBLIC INFORMATION**

1. The authority citation for part 2 continues to read as follows:

**Authority:** 5 U.S.C. 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

**Subpart B—Confidentiality of Business Information**

2. Amend § 2.301 by revising paragraph (d) to read as follows:

**§ 2.301 Special rules governing certain information obtained under the Clean Air Act.**

* * * * *

(d) *Data submitted under part 98 or part 99 of this chapter*—(1) Sections 2.201 through 2.215 do not apply to data submitted under part 98 or part 99 of this chapter that EPA has determined, pursuant to sections 114(c) and 307(d) of the Clean Air Act, to be either of the following:

(i) Emission data.

(ii) Data not otherwise entitled to confidential treatment pursuant to section 114(c) of the Clean Air Act.

(2) Except as otherwise provided in this paragraph (d)(2) and paragraph (d)(4) of this section, §§ 2.201 through 2.215 do not apply to data submitted under part 98 or part 99 of this chapter that EPA has determined, pursuant to sections 114(c) and 307(d) of the Clean Air Act, to be entitled to confidential treatment. EPA shall treat that information as confidential in accordance with the provisions of § 2.211, subject to paragraph (d)(4) of this section and § 2.209.

(3) Upon receiving a request under 5 U.S.C. 552 for data submitted under part 98 or part 99 of this chapter that EPA has determined, pursuant to sections 114(c) and 307(d) of the Clean Air Act, to be entitled to confidential treatment, the EPA office shall furnish the requestor a notice that the information has been determined to be entitled to confidential treatment and that

the request is therefore denied. The notice shall include or cite to the appropriate EPA determination.

(4) Modification of prior confidentiality determination. A determination made pursuant to sections 114(c) and 307(d) of the Clean Air Act that information submitted under part 98 or part 99 of this chapter is entitled to confidential treatment shall continue in effect unless, subsequent to the confidentiality determination, EPA takes one of the following actions:

(i) EPA determines, pursuant to sections 114(c) and 307(d) of the Clean Air Act, that the information is emission data or data not otherwise entitled to confidential treatment under section 114(c) of the Clean Air Act.

(ii) The Office of General Counsel issues a final determination, based on the criteria in § 2.208, stating that the information is no longer entitled to confidential treatment because of change in the applicable law or newly-discovered or changed facts. Prior to making such final determination, EPA shall afford the business an opportunity to submit comments on pertinent issues in the manner described by §§ 2.204(e) and 2.205(b). If, after consideration of any timely comments submitted by the business, the Office of General Counsel makes a revised final determination that the information is not entitled to confidential treatment under section 114(c) of the Clean Air Act, EPA will notify the business in accordance with the procedures described in § 2.205(f)(2).

* * * * *

3. Add part 99 to read as follows:

**PART 99—WASTE EMISSIONS CHARGE**

Sec.

**Subpart A—General Provisions**

**Authority:** 42 U.S.C. 7401–7671q; 31 U.S.C. 3717.

**Subpart A—General Provisions**

**§ 99.1 Purpose and scope.**

(a) This part establishes requirements for owners and operators of certain petroleum and natural gas systems facilities to make filings and be assessed waste emission charges as required by section 136 of the Clean Air Act.

(b) Owners and operators of facilities that are subject to this part must follow the requirements of this subpart and all applicable subparts of this part. If a conflict exists between a provision in subpart A and any other applicable subpart, the requirements of the applicable subpart shall take precedence.

**§ 99.2 Definitions.**

All terms used in this part shall have the same meaning given in the Clean Air Act, unless as defined in this section. Terms defined here only apply within the context of this rulemaking.

*Act* means the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq*.

*Affected facility* means, for the purposes of the regulatory compliance exemption of this part, affected facilities, as defined in part 60, subpart A of this chapter, that are subject to methane emissions requirements pursuant to part 60 of this chapter.

*Applicable facility* means a facility within one or more of the following industry segments, as those industry segment terms are defined in § 98.230 of this chapter. In the case where operations from two or more industry segments are co-located at the same part 98 reporting facility, operations for all co-located segments constitute a single *applicable facility* under this part:

(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 pipeline.

*Carbon dioxide equivalent or $CO_2e$* means the number of metric tons of $CO_2$ emissions with the same global warming potential as one metric ton of another greenhouse gas and is calculated using Equation A-1 in § 98.2(b) of this chapter.

*Designated facility* means, for purposes of the regulatory compliance exemption of this part, designated facilities, as defined in § 60.21a(b) of this chapter, subject to methane emissions requirements pursuant to a state, Tribal, or Federal plan implementing part 60 of this chapter.

*e-GGRT ID number* means the identification number assigned to a facility by the EPA's electronic Greenhouse Gas Reporting Tool for submission of the facility's part 98 report.

*Facility applicable emissions* means the annual methane emissions, as calculated in § 99.21, associated with a WEC applicable facility that are either equal to, below, or exceeding the waste emissions threshold for the WEC applicable facility prior to consideration of any applicable exemptions.

*Gas to oil ratio (GOR)* means the ratio of the volume of gas at standard temperature and pressure that is produced from a volume of oil when depressurized to standard temperature and pressure.

*Gathering and boosting system* means a single network of pipelines, compressors and process equipment, including equipment to perform natural gas compression, dehydration, and acid gas removal, that has one or more connection points to gas and oil production and a downstream endpoint, typically a gas processing plant, transmission pipeline, LDC pipeline, or other gathering and boosting system.

*Gathering and boosting system owner or operator* means any person that holds a contract in which they agree to transport petroleum or natural gas from one or more onshore petroleum and natural gas production wells to a natural gas processing facility, another gathering and boosting system, a natural gas transmission pipeline, or a distribution pipeline, or any person responsible for custody of the petroleum or natural gas transported.

*Global warming potential or GWP* means the ratio of the time-integrated radiative forcing from the instantaneous release of one kilogram of a trace substance relative to that of one kilogram of a reference gas (*i.e.,* $CO_2$). GWPs for each greenhouse gas are provided in Table A-1 of part 98, subpart A of this chapter.

*Greenhouse gas or GHG* means the air pollutants carbon dioxide ($CO_2$), hydrofluorocarbons (HFCs), methane ($CH_4$), nitrous oxide ($N_2O$), perfluorocarbons (PFCs), and sulfur hexafluoride ($SF_6$).

*Natural gas* means a naturally occurring mixture or process derivative of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth's surface, of which its constituents include, but are not limited to, methane, heavier hydrocarbons and carbon dioxide. Natural gas may be field quality, pipeline quality, or process gas.

*Nonproduction sector* means facilities in the onshore natural gas processing, the liquefied natural gas storage, the liquefied natural gas import and export equipment, and the onshore petroleum and natural gas gathering and boosting industry segments as those industry segments are defined in § 98.230 of this chapter.

*Onshore natural gas transmission pipeline owner or operator* means, for interstate pipelines, the person identified as the transmission pipeline owner or operator on the Certificate of Public Convenience and Necessity issued under 15 U.S.C. 717f, or, for intrastate pipelines, the person identified as the owner or operator on the transmission pipeline's Statement of Operating Conditions under section 311 of the Natural Gas Policy Act, or for pipelines that fall under the "Hinshaw Exemption" as referenced in section 1(c) of the Natural Gas Act, 15 U.S.C. 717–717 (w)(1994), the person identified as the owner or operator on blanket certificates issued under 18 CFR 284.224. If an intrastate pipeline is not subject to section 311 of the Natural Gas Policy Act (NGPA), the onshore natural gas transmission pipeline owner or operator is the person identified as the owner or operator on reports to the state regulatory body regulating rates and charges for the sale of natural gas to consumers.

*Onshore petroleum and natural gas production owner or operator* means the person or entity who holds the permit to operate petroleum and natural gas wells on the drilling permit or an operating permit where no drilling permit is issued, which operates a facility in the onshore petroleum and/or natural gas production industry segment (as that industry segment is defined in

§ 98.230(a)(2) of this chapter). Where petroleum and natural gas wells operate without a drilling or operating permit, the person or entity that pays the State or Federal business income taxes is considered the owner or operator.

*Operator* means, except as otherwise defined in this section, any person who operates or supervises a facility.

*Owner* means, except as otherwise defined in this section, any person who has legal or equitable title to, has a leasehold interest in, or control of an applicable facility, except a person whose legal or equitable title to or leasehold interest in the facility arises solely because the person is a limited partner in a partnership that has legal or equitable title to, has a leasehold interest in, or control of the facility shall not be considered an "owner" of the facility.

*Part 98 report* means the annual report required under part 98 of this chapter for owners and operators of certain facilities under the Petroleum and Natural Gas Systems source category.

*Petroleum* means oil removed from the earth and the oil derived from tar sands and shale.

*Production sector* means facilities in the offshore petroleum and natural gas production and the onshore petroleum and natural gas production industry segments as those industry segments are defined in § 98.230 of this chapter.

*Reporting year* means the calendar year during which data are required to be collected for purposes of the annual WEC filing. For example, reporting year 2024 is January 1, 2024 through December 31, 2024, and the annual WEC filing for reporting year 2024 is submitted to EPA by March 31, 2025.

*Standard temperature and pressure* means 60° F and 14.7 psia.

*Transmission sector* means facilities in the onshore natural gas transmission compression, the underground natural gas storage, and the onshore transmission pipeline industry segments as those industry segments are defined in § 98.230 of this chapter.

*Waste emissions threshold* means 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* means waste emissions charge, the charge established in CAA 136(c) on methane emissions that exceed certain thresholds.

*WEC applicable emissions* means the annual methane emissions, as calculated in § 99.21, 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* means an applicable facility, as defined in this section, for which the owner or operator of the part 98 reporting facility reports GHG emissions under part 98, subpart W of this chapter of more than 25,000 metric tons $CO_2e$.

*WEC filing* means the report and payment of applicable WEC obligation required to be submitted by a WEC obligated party under the requirements of this chapter. The WEC filing contains information regarding the WEC obligated party and WEC applicable facilities for the previous reporting year. For example, the WEC filing due on March 31, 2025 contains information regarding reporting year 2024, which is January 1, 2024 through December 31, 2024.

*WEC obligated party* means the owner or operator as defined in this section for the applicable industry segment as of December 31 of the reporting year. In cases where a WEC applicable facility has more than one owner or operator, the WEC obligated party shall be a person or entity selected by an agreement binding on each of the owners and operators involved in the transaction, following the provisions of § 99.4(b).

*WEC obligation* means the WEC charge amount resulting from the calculations in § 99.23.

*You* means a WEC obligated party subject to this part 99.

**§ 99.3 Who must file?**

WEC obligated parties, as defined in § 99.2, are required to submit a WEC filing and remit applicable WEC obligations and charges.

**§ 99.4 How do I authorize and what are the responsibilities of the designated representative?**

Each WEC obligated party must follow the procedures in paragraphs (a) through (l) of this section, as applicable, to identify a WEC obligated party designated representative. In cases where a WEC applicable facility has more than one owner or operator, the WEC obligated party shall be a person or entity selected by an agreement binding on each of the owners and operators involved in the transaction, following the provisions of paragraph (b) of this section. Failure to select a WEC obligated party for each WEC applicable facility with multiple owners or operators following the procedures of paragraph (b) of this section is considered a violation of this part for each owner and operator (as defined in § 99.2 of this part) for the applicable industry segment of the associated WEC applicable facility.

(a) *General*. Except as provided under paragraph (f) of this section, each WEC obligated party that is subject to this part shall have one designated representative, who shall be responsible for certifying, signing, and submitting WEC filings or other submissions to the Administrator under this part.

(b) *Authorization of a designated representative*. The designated representative of each WEC obligated party shall be an individual selected by an agreement binding on the owner and operator of such entity and shall act in accordance with the certification statement in paragraph (i)(3)(iv) of this section. Failure of a WEC obligated party to authorize a designated representative following the procedures of this section is considered a violation of this part.

(c) *Responsibility of the designated representative*. Upon receipt by the Administrator of a complete certificate of representation under this section for the WEC obligated party, the designated representative identified in such certificate of representation shall represent and, by

his or her representations, actions, inactions, or submissions, legally bind the owner and operator of such an entity in all matters pertaining to this part, notwithstanding any agreement between the designated representative and said owner and operator. The owner and operator shall be bound by any decision or order issued to the designated representative by the Administrator or a court.

(d) *Timing*. No WEC filing or other submissions under this part for a WEC obligated party will be accepted until the Administrator has received a complete certificate of representation under this section for a designated representative of the WEC obligated party. Such certificate of representation shall be submitted at least 60 days before the deadline for submission of the WEC obligated party's WEC filing under § 99.5.

(e) *Certification of the WEC filing*. Each WEC filing and any other submission under this part for a WEC obligated party shall be certified, signed, and submitted by the designated representative or any alternate designated representative of the WEC obligated party in accordance with this section and § 3.10 of this chapter.

(1) Each such submission shall include the following certification statement signed by the designated representative or any alternate designated representative: "I am authorized to make this submission on behalf of the owner and operator of the WEC obligated party, for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The Administrator will accept a WEC filing or other submission for a WEC obligated party under this part only if the submission is certified, signed, and submitted in accordance with this section.

(f) *Alternate designated representative*. A certificate of representation under this section for the WEC obligated party may designate one alternate designated representative, who shall be an individual selected by an agreement binding on the owner and operator, and may act on behalf of the WEC obligated party designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) Upon receipt by the Administrator of a complete certificate of representation under this section for a WEC obligated party identifying an alternate designated representative, the following apply.

(i) The alternate WEC obligated party designated representative may act on behalf of the WEC obligated party designated representative.

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the WEC obligated party designated representative.

(2) Except in this section, whenever the term "designated representative" is used in this part, the term shall be construed to include the designated representative or any alternate designated representative.

(g) *Changing a designated representative or alternate designated representative*. The designated representative or alternate designated representative identified in a complete certificate of representation under this section for a WEC obligated party received by the Administrator may be changed at any time upon receipt by the Administrator of another later signed, complete certificate of representation under this section for the WEC obligated party. Notwithstanding any such change, all representations, actions, inactions, and submissions by the

previous designated representative or the previous alternate designated representative of the WEC obligated party before the time and date when the Administrator receives such later signed certificate of representation shall be binding on the new designated representative and the owner and operator of the WEC obligated party.

(h) *Changes in the WEC obligated party*. Within 90 days after any change in the WEC obligated party, the designated representative or any alternate designated representative shall submit a certificate of representation that is complete under this section to reflect the change.

(i) *Certificate of representation*. A certificate of representation shall be complete if it includes the following elements in a format prescribed by the Administrator in accordance with this section:

(1) Identification of the WEC obligated party for which the certificate of representation is submitted.

(2) The name, organization name (company affiliation-employer), address, e-mail address, telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.

(3) The following certification statements by the designated representative and any alternate designated representative:

(i) "I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owner and operator of the entity."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under 40 CFR part 99 on behalf of the owner and operator of the entity and that such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the owner and operator of the entity, as applicable, shall be bound by any order issued to me by the Administrator or a court regarding the entity."

(iv) “If there are multiple owners and operators of the entity, I certify that I have given a written notice of my selection as the ‘designated representative’ or ‘alternate designated representative’, as applicable, and of the agreement by which I was selected to each owner and operator of the entity.”

(4) The signature of the designated representative and any alternate designated representative and the dates signed.

(j) *Documents of agreement*. Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(k) *Binding nature of the certificate of representation*. Once a complete certificate of representation under this section for a WEC obligated party has been received, the Administrator will rely on the certificate of representation unless and until a later signed, complete certificate of representation under this section for the facility is received by the Administrator.

(l) Objections concerning a designated representative.

(1) Except as provided in paragraph (g) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative, or the finality of any decision or order by the Administrator under this part.

(2) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative.

**§ 99.5 When must I file and remit the applicable WEC obligation?**

Each WEC obligated party must submit their WEC filing including the information specified in § 99.7 and remit applicable WEC obligation no later than March 31 of the year following the reporting year. All filing revisions must be received according to the schedule in § 99.7(e) to be considered for revisions to WEC obligations. If the submission date falls on a weekend or a federal holiday, the submission date shall be extended to the next business day.

**§ 99.6 How do I file?**

Each WEC filing, certificate of representation, and remittance of applicable WEC fees for the WEC obligated party must be submitted electronically in accordance with the requirements of this part and in a format specified by the Administrator.

**§ 99.7 What are the general reporting, recordkeeping, and verification requirements of this part?**

The WEC obligated party that is subject to the requirements of this part must submit a WEC filing to the Administrator as specified in this section.

(a) *Schedule*. The WEC filing must be submitted in accordance with § 99.5.

(b) *Content of the WEC filing*. For each WEC obligated party, report the information in paragraphs (b)(1)(i) through (v) of this section. For each WEC applicable facility under common ownership or control of the WEC obligated party, report the information in paragraphs (b)(2)(i) through (vii) of this section. The WEC filing must also include payment of applicable WEC obligation, as specified in paragraph (b)(3) of this section.

(1) Reporting requirements at the WEC obligated party level.

(i) The company name.

(ii) The United States address for the company.

(iii) The name, address, e-mail address, and phone number for the designated representative for the WEC obligated party.

(iv) The list of e-GGRT ID number(s) under which the WEC applicable facilities comprising the WEC obligated party as of December 31 of the reporting year report under part 98, subpart W of this chapter.

(v) The net WEC emissions, as calculated pursuant to § 99.22, and WEC obligation, as calculated pursuant to § 99.23, for the WEC obligated party.

(2) Reporting requirements for each WEC applicable facility comprising the WEC obligated party.

(i) The e-GGRT ID under which the WEC applicable facility emissions are reported under part 98, subpart W of this chapter.

(ii) The industry segment(s) for the WEC applicable facility.

(iii) For WEC applicable facilities in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment as defined in § 99.2, if conditions specified in § 99.30 regarding emissions from delays in permitting are met, provide information as specified in § 99.31.

(iv) If the conditions specified in § 99.40 are met regarding the regulatory compliance exemption, report whether the WEC applicable facility contains any affected facilities under part 60 of this chapter or any designated facilities under an applicable approved state, Tribal, Federal plan in part 62 of this chapter. If so, provide the information specified in § 99.41, as applicable.

(v) For WEC applicable facilities in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment as defined in § 99.2, if conditions specified in § 99.50 regarding emissions from permanently shut-in and plugged wells are met, you must report the information specified in § 99.51.

(vi) The facility waste emissions threshold as calculated pursuant to § 99.20, and, if there is more than one applicable industry segment within the WEC applicable facility, each industry segment waste emissions threshold for each applicable industry segment within the applicable facility, as calculated pursuant to § 99.20,

(vii) The facility applicable emissions, as calculated pursuant to § 99.21 and the WEC applicable emissions, as calculated pursuant to § 99.21.

(3) Payment of applicable WEC obligation, submitted in accordance with § 99.9.

(c) *Verification of the WEC filing*. To verify the completeness and accuracy of WEC filing, the EPA will consider the verification status of part 98 reports, and may review the certification statements described in § 99.4 and any other credible evidence, in conjunction with a comprehensive review of the WEC filing, including attachments. The EPA may conduct audits of selected WEC obligated parties and associated WEC applicable facilities. During such audits, the records generated under this part must be made available to the EPA. The on-site audits may be conducted by private auditors contracted by the EPA or by Federal, State or local personnel, as appropriate, and may be required to be arranged by and conducted at the expense of the WEC obligated party. Nothing in this section prohibits the EPA from using additional information, including reports, prepared and submitted in accordance with part 60 of this chapter, or an applicable approved state, Tribal, orFederal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, to verify the completeness and accuracy of the filings.

(d) *Recordkeeping*. Retain all required records for at least 5 years from the date of submission of the WEC filing for the reporting year in which the record was generated. The records shall be kept in an electronic or hard-copy format (as appropriate) and recorded in a form that is suitable for expeditious inspection and review. Upon request by the Administrator, the records required under this section must be made available to EPA. Records may be retained off site if the records are readily available for expeditious inspection and review. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available, or, if requested by EPA, electronic records shall be converted to paper documents. You must retain the following records:

(1) All information required to be retained by part 98, subparts A and W of this chapter.

(2) Any other information not included in a part 98 report used to complete the WEC filing.

(3) All information required to be submitted as part of the WEC filing.

(e) *Annual WEC filing revisions*. Except as specified in paragraph (e)(2) of this section, the provisions of this paragraph (e) apply until November 1 of the year following the reporting year, or for a given reporting year after the November 1 deadline if the resubmission is related to the resolution of unverified data process specified at § 99.8.

(1) The WEC obligated party shall submit a revised WEC filing within 45 days of discovering that a previously submitted WEC filing contains one or more substantive errors. The revised WEC filing must correct all substantive errors. If the resubmission is due to a correction in a part 98 report resubmitted by a WEC applicable facility, the WEC obligated party must report the number of corrections made in the part 98 report(s) and a description of how the changes impact the assessment of the WEC obligation.

(2) The revisions for substantive errors as described in paragraph (e)(2)(i) and (ii) are not subject to the November 1 deadline and must be submitted according the schedule therein.

(i) Revised filings for purposes of the regulatory compliance exemption must be submitted as follows:

(A) Revised filings to submit a CAA section 111(b) or (d) compliance report which covers the remaining portion of a WEC filing year, which were not available at the time of the WEC filing, must be submitted on or before the date that the compliance report covering the remainder of the year is due under the applicable requirements of CAA section 111(b) or (d), as applicable.

(B) Revised filings to submit findings by the WEC obligated party that one or more deviations or violations discovered after the WEC filing must be submitted within 45 days of the discovery.

(ii) The Administrator may notify the WEC obligated party in writing that a WEC filing previously submitted by the owner or operator contains one or more substantive errors. Such notification will identify each such substantive error. The WEC obligated party shall, within 45 days of receipt of the notification, either resubmit the WEC filing that, for each identified substantive error, corrects the identified substantive error (in accordance with the applicable requirements of this part) or provide information demonstrating that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error. The EPA reserves to right to revise WEC obligations for a given reporting year after the November 1 final resubmission deadline if data errors are discovered by EPA at a later date.

(3) A substantive error is an error that impacts the Administrator's ability to accurately calculate a WEC obligated party's WEC obligation, which may include, but is not limited to, the list of WEC applicable facilities associated with a WEC obligated party, the emissions or throughput reported in the WEC applicable facility part 98 report(s), emissions associated with exemptions, and supporting information for each exemption to demonstrate its validity.

(4) Notwithstanding paragraphs (e)(1) and (2) of this section, upon request the Administrator may provide an extension of the 45-day period for submission of a revised report or information under paragraphs (e)(1) and (2) of this section if adequate justification is provided by the WEC obligated party. The Administrator may provide an extension of up to 30 days provided that the request is received by email to an address prescribed by the Administrator prior to the expiration of the 45-day period and that the request demonstrates that it is not practicable to submit a revised report or information under paragraphs (e)(1) and (2) of this section within 45 days.

(5) The WEC obligated party shall retain documentation for 5 years to support any revision made to a WEC filing.

(6) If a facility changes ownership such that there is a change to the WEC obligated party, the entity that was the WEC obligated party at the time of the original filing for a reporting year remains responsible for any revisions to WEC filings for that reporting year.

(f) *Designation of unverified filings and reports*. Following the verification process discussed in § 98.3(h) of this chapter for part 98 reports and paragraph (c) of this section for WEC filings, the EPA shall designate:

(1) The annual part 98 report associated with each WEC applicable facility as either verified or unverified. An unverified report is one in which the EPA has provided notification under § 98.3(h)(2) of this chapter and the owner or operator of the WEC applicable facility has failed to revise and resubmit the report and resolve the error or provide justification to the satisfaction of the EPA that the identified error is not a substantive error (in accordance with the applicable requirements of § 98.3(h)(3) of this chapter).

(2) The annual WEC filing from each WEC obligated party submitted pursuant to § 99.7 as either verified or unverified. An unverified filing is one in which the EPA has provided notification under § 99.7(e)(2) and the WEC obligated party designated representative has failed to resubmit the report and for each identified substantive error correct the identified substantive error (in accordance with the applicable requirements of paragraph (e)(3) of this section) or provide information demonstrating that the submitted report does not contain the identified substantive error or that the identified error is not a substantive error. The determination of verification status of a part 98 report under paragraph (f)(1) of this section will be taken into consideration in the determination of the verification status of a WEC filing.

**§ 99.8 What are the general provisions for assessment of the WEC obligation?**

(a) *Assessment of the WEC obligation*. WEC obligation assessments shall be made pursuant to § 99.23 on the basis of information submitted by the date specified in § 99.5 and following the submittal requirements of § 99.6.

(b) *Assessment of the WEC obligation for unverified filings*. If a WEC filing is unverified but the EPA is able to correct the error(s) based on reported data, the EPA will recalculate the WEC using available information and provide an invoice or refund to the WEC obligated party within 60 days of determining a WEC filing to be unverified. If the WEC obligated party resubmits a WEC filing within that timeframe, the EPA will either verify the resubmission, or take the resubmission into account when calculating the WEC.

(c) *Third-party audits for unverified reports*. If the EPA is unable to calculate the WEC with available information, the EPA may require the WEC obligated party to undergo a third party audit. The EPA may require the WEC obligated party to fund and arrange the third-party audit. The third-party auditor must review records kept by the WEC obligated party, quantify the WEC with available information, and the updated WEC calculations and supporting data must be submitted to the EPA. The EPA will then take that information into consideration and calculate the WEC and provide an invoice or refund to the WEC obligated party.

(1) *Third party reviews*. An independent third-party audit of the information provided shall be based on a review of the relevant documents and shall identify each item required by the WEC filing, describe how the independent third-party evaluated the accuracy of the information provided, state whether the independent third-party agrees with the information provided, and identify any exceptions between the independent third-party's findings and the information provided.

(i) Audits required under this section must be conducted by a certified independent third-party. The auditor must have professional work experience in the petroleum engineering field or related to oil and gas production, gathering, processing, transmission or storage.

(ii) To be considered an independent third-party, the independent third party shall not be operated by the WEC obligated party and the independent third party shall be free from any interest in the WEC obligated party’s business.

(iii) The independent third-party shall submit all records pertaining to the audit required under this section, including information supporting all of the requirements of § 99.8(c)(1) to the WEC obligated party.

(iv) The independent third-party must provide to the WEC obligated party documentation of qualifications of professional work experience in the petroleum engineering field or related to oil and gas production, gathering, processing, transmission or storage.

(2) *Reporting and recordkeeping requirements for WEC obligated parties following third party audits*.

(i) The WEC obligated party shall provide to EPA the results of the third-party audit, including the WEC obligation amount and all supporting documentation information that is included in reporting requirements under §§ 99.7, and 99.31, 99.41, and 99.51, as applicable.

(ii) The WEC obligated party shall provide to EPA documentation of qualifications of the third-party auditor.

(iii) The WEC obligated party shall retain all records pertaining to the audit required under this section for a period of 5 years from the date of creation and shall deliver such records to the Administrator upon request.

(d) *Resubmittal of filings and reports for the current or prior reporting year*. If resubmittal of a previously submitted part 98 report and/or WEC filing, submitted as specified in §99.7(e), results in a change to the WEC obligation determined for a WEC obligated party for the reporting yearthe following process shall apply:

(1) If the WEC obligation based upon the resubmitted report or filing for the reporting year is less than the WEC obligation previously remitted by the WEC obligated party, the Administrator shall authorize a refund to the WEC obligated party equal to the difference in WEC obligation.

(2) If the WEC obligation based upon the resubmitted report or filing for the reporting year is greater than the WEC obligation previously remitted by the WEC obligated party, the

Administrator shall issue an invoice to the WEC obligated party containing a charge in the amount determined using Equation A-1 of this section. Interest shall not be assessed for a change in WEC obligation resulting from the timely submittal of a regulatory report in accordance with § 99.41(c).

$$WEC_r = \Delta WEC \times \left(1 + \frac{i_{CVFR}}{365}\right)^t \quad \text{(Eq. A-1)}$$

Where:

| | | |
|---|---|---|
| $WEC_r$ | = | The charge obligation of the WEC obligated party to be resubmitted for the difference in WEC obligation, including any applicable interest, in dollars. |
| ΔWEC | = | The difference in WEC obligation, calculated as the amount remitted upon the original submittal specified in § 99.5 subtracted from the quantity of WEC obligation determined based upon the resubmitted report or filing, in dollars. |
| $i_{CVFR}$ | = | The Treasury Current Value of Funds Rate as specified in § 99.10(b). |
| t | = | The number of days after the deadline specified in § 99.5 for remittance of WEC obligation for the reporting year that the resubmitted WEC filing or part 99 report was received by the Administrator, in days. For example, if a reporting year 2024 part 99 report is resubmitted on April 28, 2025, "t" is equal to 28 days. If a reporting year 2024 part 99 report is resubmitted on April 28, 2026, "t" is equal to 393 days. |
| 365 | = | Conversion factor from years to days. |

**§ 99.9 How are payments required by this part made?**

(a) The WEC obligation owed for each reporting year must be paid by the WEC obligated party as part of the annual WEC filling, as required by § 99.7(b), and is considered due at the date specified in § 99.5.

(b) Other than the WEC obligation specified in paragraph (a) of this section, all other charges required by this part, including adjusted WEC obligations, interest fees, and penalties, shall be paid by the WEC obligated party in response to an electronic invoice or bill by the specified due date, or within 30 days of the date of the invoice or bill if a due date is not provided.

(c) All WEC obligations, interest fees, and penalties required by this subpart shall be paid to the Department of the Treasury by the WEC obligated party electronically in U.S. dollars, using an online electronic payment service specified by the Administrator.

**§ 99.10 What fees apply to delinquent payments?**

(a) *Delinquency*. WEC obligated party accounts are delinquent if the WEC obligation payment is not submitted in full by the date required by § 99.5. WEC obligated party accounts are also delinquent if the accounts remain unpaid after the due date specified in the invoice or other notice of the WEC amount owed.

(b) *Interest fee*. In accordance with 31 U.S.C. 3717(a), delinquent WEC obligated party accounts shall be charged a minimum annual rate of interest equal to the average investment rate for Treasury tax and loan accounts (Current Value of Funds Rate or CVFR) most recently published and in effect by the Secretary of the Treasury.

(c) *Non-payment penalty*. In accordance with 31 U.S.C. 3717(e), WEC obligated party accounts that are more than 90 days past due shall be charged an additional penalty of 6% per year assessed on any part of the debt that is past due for more than 90 days.

(d) *Penalty for non-submittal*. In accordance with 42 U.S.C. 7413(d)(1), a WEC obligated party that fails to submit an annual WEC filing by the date specified in § 99.5 may be charged an administrative penalty. The penalty assessment shall be a daily assessment per day that the WEC filing is not submitted, assessed up to the value specified in Table 1 of § 19.4, as amended, of this chapter. The assessment of penalty shall begin on the date that the WEC filing was considered past due per § 99.5 and continue until such time that the WEC filing is submitted by the WEC obligated party's designated representative.

**§ 99.11 What are the compliance and enforcement provisions of this part?**

Any violation of any requirement of this part shall be a violation of the Clean Air Act, including section 114 (42 U.S.C. 7414) and section 136 (42 U.S.C. 7436). A violation would include, but is not limited to, failure to submit a WEC filing, failure to collect data needed to

calculate the WEC charge (including any data relevant to determining the applicability of any exemptions), failure to select a WEC obligated party, failure to retain records needed to verify the amount of WEC charge, providing false information in a WEC filing, and failure to remit WEC payment. Each day of a violation would constitute a separate violation. Each day of each violation constitutes a separate violation. Any penalty assessed shall be in addition to any WEC obligation due under this part and any fees applicable to delinquent payments due under § 99.10.

**§ 99.12 What addresses apply for this part?**

All requests, notifications, and communications to the Administrator pursuant to this part must be submitted electronically and in a format as specified by the Administrator.

**§ 99.13 What are the confidentiality determinations and related procedures for this part?**

This section characterizes various categories of information for purposes of making confidentiality determinations, as follows:

(a) This paragraph (a) applies the definition of "Emission data" in 40 CFR 2.301(a) for information reported under this part. "Emission data" cannot be treated as confidential business information and shall be available to be disclosed to the public. The following categories of information qualify as emission data:

(1) Methane emission information, including the net WEC emissions, waste emissions thresholds, WEC applicable emissions, and the quantity of methane emissions to be exempted due to unreasonable delay and wells that were permanently shut-in and abandoned.

(2) Calculation methodology, including the method used to determine the quantity of methane emissions to be exempted due to an unreasonable permitting delay and the method used to quantify emissions exempted from permanently shut-in and plugged wells.

(3) Facility and unit identifier information, including WEC obligated party company name and address, the name and contact information for the designated representative of WEC obligated party, signed and dated certification statements of the accuracy and completeness of the report, facility identifiers (*e.g.*, e-GGRT ID number), industry segment, well-pad and/or well

identifiers, and emission source-specific methane mitigation activities impacted by an unreasonable permitting delay.

(b) The following types of information are not eligible for confidential treatment:

(1) The WEC obligation, as calculated pursuant to § 99.23.

(2) Compliance information, including information regarding applicable emissions standards or other relevant standards of performance or requirements, information in construction or operating permits, and information submitted to document compliance with an emissions standard or a standard of performance, such as a periodic report, prepared and submitted in accordance with part 60 of this chapter, or an applicable approved state, Tribal, orFederal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, (excluding any information redacted from the report and claimed as confidential).

(3) Published information that is publicly available, including information that is made available through publication of annual reports submitted under part 98 of this chapter, on company or other websites, or otherwise made publicly available.

(c) If you submit information that is not described in paragraphs (a) and (b) of this section, you may claim the information as confidential and the information is subject to the process for confidentiality determinations in 40 CFR part 2 as described in §§ 2.201 through 2.208. We may require you to provide us with information to substantiate your claims. If claimed, we may consider this substantiating information to be confidential to the same degree as the information for which you are requesting confidential treatment. We will make our determination based on your statements to us, the supporting information you send us, and any other available information. However, we may determine that your information is not subject to confidential treatment consistent with 40 CFR part 2 and 5 U.S.C. 552(b)(4).

(d) Submitted applications and reports typically rely on software or templates to identify specific categories of information. If you submit information in a comment field designated for

users to add general information, we will respond to requests for disclosing that information consistent with paragraphs (a) through (c) of this section.

**Subpart B—Determining Waste Emissions Charge**

**§ 99.20 How will the waste emissions threshold for each WEC applicable facility be determined?**

The methane waste emissions threshold for each applicable industry segment within a WEC applicable facility for the reporting year will be calculated as described in paragraphs (a) through (d) of this section, as applicable. The methane waste emissions threshold for each WEC applicable facility will be determined as described in paragraph (e) of this section.

(a) For each offshore petroleum and natural gas production industry segment or onshore petroleum and natural gas production industry segment that sends natural gas to sale at a WEC applicable facility, the facility waste emissions threshold will be calculated using Equation B-1 of this section.

$$TH_{is,Prod} = 0.002 \times \rho_{CH_4} \times Q_{ng,Prod} \quad \text{(Eq. B-1)}$$

Where:

| | | |
|---|---|---|
| $TH_{is,Prod}$ | = | The methane waste emissions threshold for the industry segment at a WEC applicable facility for the reporting year in the production sector that has natural gas sent to sale, metric tons (mt) $CH_4$. |
| 0.002 | = | Industry segment-specific methane intensity threshold, as specified in CAA section 136(f), for methane emissions for applicable facilities with natural gas sales in the production sector, thousand standard cubic feet (Mscf) $CH_4$ per Mscf of natural gas sent to sale. |
| $\rho_{CH4}$ | = | Density of methane = 0.0192 kilograms per standard cubic foot (kg/scf) = 0.0192 metric tons per thousand standard cubic feet (mt/Mscf). |
| $Q_{ng,Prod}$ | = | The total quantity of natural gas that is sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to part 98, subpart W of this chapter. For onshore petroleum and natural gas production, you must use the quantity reported pursuant to proposed § 98.236(aa)(1)(i)(B) of this chapter, in Mscf. For offshore petroleum and natural gas production, you must use the quantity reported pursuant to proposed § 98.236(aa)(2)(i) of this chapter, in Mscf. |

(b) For each offshore petroleum and natural gas production industry segment or the onshore petroleum and natural gas production industry segment that has no natural gas sent to sale at a WEC applicable facility, the facility waste emissions threshold will be calculated using Equation B-2 of this section.

$$TH_{is,Prod} = 10 \times Q_{o,Prod} \times 10^{-6} \quad \text{(Eq. B-2)}$$

Where:

| | | |
|---|---|---|
| $TH_{is,Prod}$ | = | The annual methane waste emissions threshold for the industry segment at a WEC applicable facility in the production sector that has no natural gas sent to sale, mt $CH_4$. |
| 10 | = | Industry segment-specific methane intensity threshold, as specified in CAA section 136(f), for applicable facilities with no natural gas sales in the production sector, mt $CH_4$ per million barrels oil sent to sale. |
| $Q_{o,Prod}$ | = | The total quantity of crude oil that is sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to part 98, subpart W of this chapter. For onshore petroleum and natural gas production, you must use the quantity reported pursuant to proposed § 98.236(aa)(1)(i)(C) of this chapter, in barrels. For offshore petroleum and natural gas production, you must use the quantity reported pursuant to proposed § 98.236(aa)(2)(ii) of this chapter, in barrels. |
| $10^{-6}$ | = | Conversion from barrels to million barrels. |

(c) For each onshore natural gas processing industry segment, liquefied natural gas storage industry segment, the liquefied natural gas import and export equipment industry segment, or the onshore petroleum and natural gas gathering and boosting industry segment at a WEC applicable facility, the facility waste emissions threshold will be calculated using Equation B-3 of this section.

$$TH_{is,NonProd} = 0.0005 \times \rho_{CH_4} \times Q_{ng,NonProd} \quad \text{(Eq. B-3)}$$

Where:

| | | |
|---|---|---|
| $TH_{is,NonProd}$ | = | The annual methane waste emissions threshold for the industry segment at a WEC applicable facility in the nonproduction sector, mt $CH_4$. |

| | | |
|---|---|---|
| 0.0005 | = | Industry segment-specific methane intensity threshold, as specified in CAA section 136(f), for applicable facilities in the nonproduction sector, Mscf $CH_4$ per Mscf of natural gas sent to sale from or through the facility. |
| $\rho_{CH4}$ | = | Density of methane = 0.0192 kg/scf = 0.0192 mt/Mscf. |
| $Q_{ng,NonProd}$ | = | The total quantity of natural gas that is sent to sale from or through the industry segment at a WEC applicable facility in the reporting year as reported pursuant to part 98, subpart W of this chapter. For RY 2024 for onshore natural gas processing, you must use the quantity reported pursuant to § 98.236(aa)(3)(ii) of this chapter, in Mscf and for RY 2025 and later, you must use the quantity reported pursuant to proposed § 98.236(aa)(3)(ix) of this chapter, in Mscf. For LNG import and export, you must use sum of the quantities reported pursuant to § 98.236(aa)(6) and (7) of this chapter, in Mscf. For LNG storage, you must use the quantity reported pursuant to § 98.236(aa)(8)(ii) of this chapter, in Mscf. For onshore petroleum and natural gas gathering and boosting, you must use the quantity reported pursuant to § 98.236(aa)(10)(ii) of this chapter, in Mscf . |

(d) For each onshore natural gas transmission compression industry segment, underground natural gas storage industry segment, or onshore natural gas transmission pipeline industry segment at a WEC applicable facility, the facility waste emissions threshold will be calculated using Equation B-4 of this section.

$$TH_{is,Tran} = 0.0011 \times \rho_{CH_4} \times Q_{ng,Tran} \quad \text{(Eq. B-4)}$$

Where:

| | | |
|---|---|---|
| $TH_{is,Tran}$ | = | The annual methane waste emissions threshold for the industry segment at a WEC applicable facility in the transmission sector, mt $CH_4$. |
| 0.0005 | = | Industry segment-specific methane intensity threshold, as specified in CAA section 136(f), for applicable facilities in the transmission sector, Mscf $CH_4$ per Mscf of natural gas sent to sale from or through the facility. |
| $\rho_{CH4}$ | = | Density of methane = 0.0192 kg/scf = 0.0192 mt/Mscf. |
| $Q_{ng,Tran}$ | = | The total quantity of natural gas that is sent to sale from or through the industry segment at a WEC applicable facility in the reporting year as reported pursuant to part 98, subpart W of this chapter. For onshore natural gas transmission compression, you must use the quantity reported pursuant to § 98.236(aa)(4)(i) of this chapter, in Mscf. For underground natural gas storage, you must use the quantity reported pursuant to § 98.236(aa)(5)(ii) of this chapter, in Mscf. For onshore natural gas transmission pipeline, you must use the quantity reported pursuant to § 98.236(aa)(11)(iv) of this chapter, in Mscf. |

(e) For each WEC applicable facility that operates in a single industry segment, the methane waste emissions threshold shall be equal to the value calculated in Equation B-1, Equation B-2, Equation B-3, or Equation B-4 of this section, as applicable. For each WEC applicable facility that operates in two or more industry segments, the facility waste emissions threshold will be calculated using Equation B-5 of this section.

$$TH_{WAF} = \sum_{s=1}^{N} TH_{is,s} \text{(Eq. B-5)}$$

Where:

| | | |
|---|---|---|
| $TH_{WAF}$ | = | The WEC applicable facility waste emissions threshold, mt CH4. |
| $TH_{is,s}$ | = | The industry segment waste emissions threshold, as calculated in Equation B-3 or Equation B-4 of this section, for each industry segment "s" at the WEC applicable facility, mt $CH_4$. |
| N | = | Number of industry segments at the WEC applicable facility. |

**§ 99.21 How will the WEC applicable emissions for a WEC applicable facility be determined?**

(a) The total facility applicable emissions for each WEC applicable facility will be calculated using Equation B-6 of this section.

$$E_{TFA,CH_4} = E_{SubpartW,CH_4} - TH_{WAF} \text{ (Eq. B-6)}$$

Where:

| | | |
|---|---|---|
| $E_{TFA,CH4}$ | = | The annual methane emissions equal to, below, or exceeding the waste emissions threshold for a WEC applicable facility prior to consideration of any applicable exemptions (*i.e.*, total facility applicable emissions), mt $CH_4$. |
| $E_{SubpartW,CH4}$ | = | The annual methane emissions for a WEC applicable facility, as reported under part 98, subpart W of this chapter for the corresponding reporting year, mt $CH_4$. |
| $TH_{WAF}$ | = | The waste emissions threshold for a WEC applicable facility, as determined in § 99.20(e), mt $CH_4$. |

(b) If the total facility applicable emissions calculated using Equation B-6 of this section are less than or equal to 0 mt, then the WEC applicable emissions are equal to the total facility applicable emissions.

(c) If the total facility applicable emissions calculated using Equation B-6 of this section are greater than 0 mt and the regulatory compliance exemption as specified in § 99.40 applies to the WEC applicable facility, the WEC applicable emissions for that facility are equal to 0 mt.

(d) If the total facility applicable emissions calculated using Equation B-6 of this section are greater than 0 mt and the regulatory compliance exemption as specified in § 99.40 does not apply to the WEC applicable facility, the WEC applicable emissions for each WEC applicable facility will be calculated using Equation B-7 of this section.

$$E_{WA,CH_4} = E_{TFA,CH_4} - E_{Delay,CH_4} - E_{Plug,CH_4} \quad \text{(Eq. B-7)}$$

Where:

| | | |
|---|---|---|
| $E_{WA,CH4}$ | = | The 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 (i.e., the WEC applicable emissions) , mt $CH_4$. If the result of this calculation is less than 0 mt $CH_4$, the WEC appliable emissions for the facility are equal to 0 mt $CH_4$. |
| $E_{TFA,CH4}$ | = | The annual methane emissions equal to, below, or exceeding the waste emissions threshold for a WEC applicable facility prior to consideration of any applicable exemptions for the reporting year, mt $CH_4$. |
| $E_{Delay,CH4}$ | = | The quantity of methane emissions exempted, as determined in Equation C-1 of § 99.32, at the WEC applicable facility in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment due to an unreasonable delay in environmental permitting of gathering or transmission infrastructure, mt $CH_4$. |
| $E_{Plug,CH4}$ | = | The total quantity of annual methane emissions, as determined in Equation E-5 of § 99.52, at the WEC applicable facility in the onshore petroleum and natural gas production and offshore petroleum and natural gas production industry segments, attributable to all wells that were permanently shut-in and plugged during the reporting year in accordance with all applicable closure requirements, mt $CH_4$. |

**§ 99.22 How will the net WEC emissions for a WEC obligated party be determined?**

Net WEC emissions for a WEC obligated party, equal to the sum of WEC applicable emissions from all facilities with the same WEC obligated party, as specified in 99.2, will be calculated using Equation B-8 of this section.

$$E_{NetWEC,CH_4} = \sum_{j=1}^{N} E_{WA,CH_4} \text{(Eq. B-8)}$$

Where:

| | | |
|---|---|---|
| $E_{NetWEC,CH4}$ | = | The annual methane emissions subject to the WEC for the WEC obligated party for the reporting year, mt $CH_4$. |
| $E_{WA,CH4}$ | = | The annual methane emissions equal to, below, or exceeding the waste emissions thresholds for a WEC applicable facility "j" as calculated in § 99.21(b) or (d) under common ownership or control of a WEC obligated party, mt $CH_4$. |
| N | = | Total number of WEC applicable facilities under common ownership or control of a WEC obligated party, excluding any WEC applicable facilities for which the regulatory compliance exemption as specified in § 99.40 applies. |

**§ 99.23 How will the WEC Obligation for a WEC obligated party be determined?**

(a) If the net WEC emissions for a WEC obligated party as determined in § 99.22 are less than or equal to zero, the WEC obligated party's WEC obligation is zero and the WEC obligated party is not subject to a waste emissions charge in the reporting year.

(b) If the net WEC emissions for a WEC obligated party as determined in § 99.22 are greater than zero, the WEC obligation will be calculated according to the applicable provisions in paragraphs (b)(1) through (3) of this section.

(1) For reporting year 2024, multiply the net WEC emissions from Equation B-8 of this subpart by $900 per mt $CH_4$ to determine the WEC obligation.

(2) For reporting year 2025, multiply the net WEC emissions from Equation B-8 of this subpart by $1,200 per mt $CH_4$ to determine the WEC obligation.

(3) For reporting year 2026 and each year thereafter, multiply the net WEC emissions from Equation B-8 of this subpart by $1,500 per mt $CH_4$ to determine the WEC obligation.

**Subpart C—Unreasonable Delay Exemption**

**§ 99.30 Which facilities qualify for the exemption for emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure?**

(a) The WEC applicable facility must be in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment as defined in § 99.2.

(b) The total facility applicable emissions for the WEC applicable facility as calculated in accordance with § 99.21(a) must exceed 0 mt.

(c) All requests for information regarding the permit received by either the production entity potentially eligible for the exemption or the entity seeking the environmental permit must not have exceeded the response time requested by the permitting agency, or by the relevant production or gathering or transmission infrastructure entity seeking the permit, or exceeded 30 days if no specific response time is requested.

(d) The WEC facility must report flaring emissions in the reporting year that occurred as a result of a delay in environmental permitting of gathering or transmission infrastructure, and are in compliance with all applicable local, state and federal regulations regarding flaring emissions.

(e) [A set period of months (with exact timing to be specified at final)] must have passed since submission of a complete environmental permit application, as certified by the relevant permitting authority, to construct gathering or transmission infrastructure without approval or denial of the environmental permit application.

**§ 99.31 What are the reporting requirements for the exemption for emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure?**

(a) Upon meeting all criteria in § 99.30(a) through (f), you shall report information regarding an exemption for unreasonable delay in permitting of gathering or transmission infrastructure for a given reporting year. The unreasonable delay exemption information to be reported is described in paragraph (b) of this section. The unreasonable delay exemption shall be submitted as described in paragraph (c) of this section.

(b) For each unreasonable delay exemption, the WEC obligated party must report the information specified in paragraphs (b)(1) through (10) of this section.

(1) The company name and name of the facility that submitted the permit application to construct and/or operate gathering or transmission infrastructure.

(2) The name and e-GGRT ID number under part 98, subpart W of this chapter of the production facility impacted by the unreasonable delay in environmental permitting of gathering or transmission infrastructure.

(3) The date of the initial permit request to build gathering or transmission infrastructure.

(4) An attestation that the entity seeking the permit has been responsive to the relevant authority regarding the permit application, that is that the entity has responded to all requests from the permitting authority within the time frame requested by the relevant authority or within 30 days if no timeframe is specified.

(5) For each well-pad impacted by the unreasonable delay in permitting of gathering or transmission infrastructure:

(i) The well-pad ID for each well-pad, as reported under part 98, subpart W of this chapter.

(ii) A listing of methane emissions mitigation activities that are impacted by the unreasonable permitting delay.

(6) The estimated date to commence operation of the gathering or transmission infrastructure if application had been approved before [the set period of months elapsed (exact timing to be specified at final)].

(7) If the application has been approved and operations commenced during the reporting year, the first date that offtake to the gathering or transmission infrastructure from the implementation of methane emissions mitigation occurred.

(8) The beginning and ending date for which the eligible delay limited the offtake of Nnatural gas associated with methane emissions mitigation activities for the reporting year as determined according to § 99.32(a).

(9) The quantity of methane emissions to be exempted due to the unreasonable delay for the reporting year calculated as specified in § 99.32 and the method used to determine the quantity of methane emissions to be exempted (used § 99.32(b)(1); used § 99.32(b)(2)(i); used § 99.32(b)(2)(ii) with $K_f$ based on volume; used § 99.32(b)(2)(ii) with $K_f$ based on time).

(10) Information on all applicable local, state, and federal regulations regarding flaring emissions and the facility's compliance status for each.

(11) For each permit relevant to the exemption, the name/type of permit, permitting agency, and a link to information on the permit (e.g., available through the permitting agency), if available.

(c) Each submittal under this section shall be certified, signed, and submitted by the designated representative or any alternate designated representative of the WEC obligated party in accordance with this section and § 3.10 of this chapter.

**§ 99.32 How are the methane emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure quantified?**

(a) Determine the time period associated with the emissions that occurred as a result of the eligible delay within the reporting year as specified in paragraphs (a)(1) and (2) of this section.

(1) The start date of the emissions caused by the delay in the reporting year is the latter of January 1 of the reporting year, or the date on which emissions would have been avoided through commencement of the operation of the gathering or transmission infrastructure if the application to construct and/or operate the gathering or transmission infrastructure had been approved within a set period of months as specified in § 99.31(b)(6).

(2) The end time of the emissions caused by the delay in the reporting year is the earlier of December 31 of the reporting year or the date the emissions caused by the unreasonable delay ends because the infrastructure commenced operation.

(b) For each well-pad or offshore platform at a WEC applicable facility impacted by an unreasonable delay in environmental permitting of gathering or transmission infrastructure, you must calculate the emissions that occurred at the well-pad or offshore platform that were caused by the unreasonable delay according to paragraph (b)(1) or (2) of this section, as applicable.

(1) If the unreasonable delay impacts the entire reporting year, and has resulted in the entire volume of flaring occurring from flare stacks, associated gas flaring, or offshore production flaring, then use the mass $CH_4$ emissions, in mt $CH_4$, as reported in § 98.236(m)(8)(iii), (n)(10), and/or (s)(2) of this chapter, as applicable, for the individual flare(s) in the offshore petroleum and natural gas production industry segment and onshore petroleum gas production industry segment used to flare the increased volume of gas from methane emissions mitigation implementation associated with the unreasonable delay in environmental permitting of gathering or transmission infrastructure. If multiple flares are used to flare the increased volume of gas, sum the mass $CH_4$ emissions for each flare used to flare the increased volume of gas from methane emissions mitigation implementation to determine the cumulative emissions associated with the permitting delay.

(2) If the unreasonable delay impacts only a portion of the reporting year or only a portion of the flaring emissions, determine the eligible emissions as specified in paragraph (b)(2)(i) or (ii) of this section, as applicable.

(i) If you have records to calculate the mass $CH_4$ emissions from the flare(s) used to flare the increased volume of gas from methane emissions mitigation implementation associated with the unreasonable delay in environmental permitting of gathering or transmission according to the applicable methods in subpart W of this chapter for the specific time period eligible for the exemption, you must calculate the methane emissions for the specific time period eligible for the exemption from each flare used to flare the increased volume of gas from methane emissions mitigation implementation associated with the unreasonable delay. If multiple flares are used to flare the increased volume of gas, sum the mass $CH_4$ emissions for each flare calculated according to this paragraph to determine the cumulative emissions associated with the permitting delay.

(ii) If you do not have records to calculate the mass $CH_4$ emissions for the exemption period according to paragraph (b)(2)(i) of this section, then calculate the emissions that occurred at the offshore facility or onshore well-pad caused by the unreasonable delay using Equation C-1 of this section.

$$E_{Delay,CH_4} = E_{MMFlare,CH_4} \times K_f \times X_f \qquad \text{(Eq. C-1)}$$

Where:

| | | |
|---|---|---|
| $E_{Delay,CH4}$ | = | Annual $CH_4$ emissions associated with delay in permitting in the reporting year, mt $CH_4$. |
| $E_{MMFlare,CH4}$ | = | Annual $CH_4$ emissions from the flare(s) used to flare increased volume of gas from methane emissions mitigation implementation reported in subpart W of this chapter, mt $CH_4$. |
| $K_f$ | = | Eligible timeframe adjustment factor to the $CH_4$ emissions flaring emissions for partial year exemption period. If you have records of the volume of gas flared from the impacted flare(s) during the exemption period, use the ratio of the volume of gas flared during the exemption period to the total annual volume of gas flared from the impacted flare(s) to determine $K_f$; otherwise, use the ratio of hours in the exemption period to the total annual hours in the reporting year (8760 or, for leap years, 8784) to determine $K_f$. |
| $X_f$ | = | Fraction of the flared emissions reported in subpart W of this chapter that occurred from the flare(s) due to the unreasonable delay. This fraction can be estimated based on company records of flare emissions prior to the |

unreasonable delay or through engineering calculations of flare volumes related to other sources vented to the flare(s).

**§ 99.33 What are the recordkeeping requirements for methane emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure?**

(a) For each communication the entity seeking the permit has had with the permitting authority regarding the permit application:

(1) The date and type of communication.

(2) The date of the facility's response to the communication.

(3) Information on whether the facility's response included modification to the permit application.

(b) Records of values used in the calculation of the emissions that occurred at the well-pad caused by the unreasonable delay.

**Subpart D—Regulatory Compliance Exemption**

**§ 99.40 When does the regulatory compliance exemption come into effect, and under what conditions does the exemption cease to be in effect?**

(a) The requirements of this subpart only apply to a WEC applicable facility when the total facility applicable emissions for that WEC applicable facility as calculated in accordance with § 99.21(a) exceed 0 mt $CH_4$.

(b) The requirements of § 99.41 shall only be in effect when each of the following conditions are met:

(1) A determination has been made by the Administrator that methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 of the Act have been approved and are in effect in all States with respect to the applicable facilities; and

(2) A determination has been made by the Administrator that the emissions reductions achieved by compliance with the requirements described in paragraph (b)(1) of this section will result in equivalent or greater emissions reductions on a nationwide basis as would be achieved

by the proposed rule of the Administrator entitled 'Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review' (86 FR 63110; November 15, 2021), if such rule had been finalized and implemented.

(c) At such time that the conditions specified in paragraphs (b)(1) and (2) of this section are met, the reporting requirements of § 99.41 shall come into effect beginning with the WEC filing due on the date specified in § 99.5 in the calendar year following the calendar year in which the conditions were met. Imposition of the waste emission charge shall not be made on an applicable facility meeting the requirements for regulatory compliance exemption for methane emissions that occurred during the calendar year during which the conditions are met.

(d) If any of the conditions in paragraph (b)(1) or (2) of this section cease to apply after the Administrator has made the determinations in paragraph (b)(1) and (2) of this section, the reporting requirements of § 99.41 shall cease to be in effect beginning with the WEC filing due on the date specified in § 99.5 in the calendar year during which either of the conditions were no longer met.

**§ 99.41 Which facilities qualify for the exemption for regulatory compliance?**

(a) The total facility applicable emissions for the WEC applicable facility as calculated in accordance with § 99.21(a) or (d) must exceed 0 mt.

(b) The WEC applicable facility must contain one or more affected facilities or one or more designated facilities.

(c) At the WEC applicable facility, all affected facilities and all designated facilities located at this WEC applicable facility, must have no deviations or violations with the methane emissions requirements of part 60 of this chapter and the methane emissions requirements requirements of an applicable approved state, Tribal, or Federal plan in part 62 of this chapter, including all applicable emission standard, work practice, monitoring, reporting, and recordkeeping requirements.

**§ 99.42 What are the reporting requirements for the exemption for regulatory compliance?**

(a) A facility eligible for the regulatory compliance exemption that meets the criteria described in § 99.41 shall include information as described in paragraph (b) of this section. A facility that meets the criteria described in § 99.41(a) and (b) but is not eligible for the exemption because it does not meet the criteria in § 99.41(c) shall include information as described in paragraph (d) of this section. The regulatory compliance exemption information shall be submitted as described in § 99.7.

(b) A facility meeting the criteria in § 99.41 must report all of the information specified in paragraphs (b) of this section, as applicable.

(1) For each WEC applicable facility, an assertion that the facility meets all of the eligibility criteria in § 99.41.

(2) The ICIS-AIR ID (or Facility Registry Service (FRS) ID if the ICIS-AIR ID is not available) and EPA Registry ID from CEDRI associated with each affected facility and designated facility located at the WEC applicable facility.

(3) If a report, or reports, prepared and submitted in accordance with part 60 of this chapter, or an applicable approved state, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, cover the complete reporting year *(i.e.,* January 1 through December 31, inclusive), then submit as attachment(s) the applicable report(s).

(4) If a report, or reports, prepared and submitted in accordance with part 60 of this chapter, or an applicable approved state, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, does not cover the complete reporting year (*i.e.,* January 1 through December 31, inclusive), then submit as attachment(s) the applicable report(s).

(c) If, pursuant to paragraph (b)(4) of this section, you are unable to provide an annual report covering the entire reporting year at the time of the initial submittal specified in § 99.5,

you must provide a revised WEC filing on or before such time that an annual report covering the entire reporting year is required to be submitted under the applicable requirements of part 60 of this chapter or an applicable approved state, Tribal, or Federal plan in part 62 of this chapter. This requirement also applies in the case where the initial WEC filing contains an annual report covering only a portion of the reporting year. On or before such time that an annual report is due under the applicable requirements of part 60 of this chapter or an applicable approved state, Tribal, or Federal plan in part 62 of this chapter for the portion of the reporting year for which a previously submitted report does not cover, you must provide a revised WEC filing including the subsequent annual report. The resubmission of the revised WEC filing shall be considered timely under this paragraph if it is made on or before the date that the annual report is due under the applicable requirements of part 60 of this chapter or an applicable approved state, Tribal, or Federal plan in part 62 of this chapter. In such cases where a newly available report indicates one or more deviations or violations from applicable methane emissions requirements that were not previously indicated in the WEC filing for the reporting year (*i.e.*, the WEC applicable facility would no longer qualify for the regulatory compliance exemption), a WEC applicable facility would no longer be subject the reporting requirements in § 99.42(b) and would become subject to the reporting requirements in § 99.42(d) in the revised WEC filing.

(d) If least one of the affected facilities subject to the requirements of part 60 of this chapter or designated facilities subject to the requirements of an applicable approved state, Tribal, or Federal plan in part 62 of this chapter that is contained within your WEC applicable facility has a deviation or violation from its applicable methane emissions requirements (i.e., does not meet the criteria in § 99.41(c)), provide a copy of one report, prepared and submitted in accordance with part 60 of this chapter, or an applicable approved state, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, that demonstrates that the affected facility or designated facility were not in compliance.

(e) A WEC applicable facility's eligibility for the regulatory compliance exemption pursuant to this subpart does not constitute a determination of compliance for part 60 of this chapter, or an applicable approved state, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, for any affected facility or designated facility present at the applicable facility.

(f) A WEC applicable facility's eligibility for the regulatory compliance exemption during a given reporting year does not preclude reassessment of applicable waste emissions charges for that applicable facility upon discovery by the Administrator or a delegated authority of any violation of the methane emissions requirements pursuant to part 60 of this chapter, or an applicable approved state, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, for the affected facilities or designated facilities present at the applicable facility.

**Subpart E—Exemption for Permanently Shut-in and Plugged Wells**

**§ 99.50 Which facilities qualify for the exemption of emissions from permanently shut-in and plugged wells?**

(a) The total facility applicable emissions for the WEC applicable facility containing permanently shut-in and plugged wells must exceed 0 mt as calculated in accordance with § 99.21(a).

(b) This exemption is applicable to WEC applicable facilities in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment as defined in § 99.2 that permanently shut-in and plugged well(s) during the reporting year. For the purposes of applying this exemption, a permanently shut-in and plugged well is one that has been permanently sealed, following all applicable local, state, or federal regulations in the jurisdiction where the well is located, to prevent any potential future leakage of oil, gas, or formation water into shallow sources of potable water, onto the surface, or into the atmosphere. Site reclamation

following placement of a metal plate or cap is not required to be completed for the well to be considered permanently shut-in and plugged for the purposes of this part.

**§ 99.51 What are the reporting requirements for the exemption for wells that were permanently shut-in and plugged?**

(a) Report the following information for each well at a WEC applicable facility, in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment, that was permanently shut-in and plugged in the reporting year.

(1) Well identification (ID) number as reported in part 98, subpart W of this chapter.

(2) Date the well was permanently shut-in and plugged, which for the purposes of this exemption, is the date when welding or cementing of a metal plate or cap onto the casing end was completed.

(3) The statutory citation for each applicable state, local, and federal regulation stipulating requirements that were applicable to the closure of the permanently shut-in and plugged well.

(4) The equation used to calculate equipment leak emissions attributable to the well (*i.e.*, Equation E-2A or E-2B of this subpart).

(5) The emissions attributable to the well calculated using Equation E-1, E-3, or E-4 of this subpart, as applicable.

(b) The total quantity of methane emissions attributable to all wells that were permanently shut-in and plugged at a WEC applicable facility, in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment, during the reporting year, calculated using Equation E-5 of this subpart.

**§ 99.52 How are the net emissions attributable to all wells at a WEC applicable facility that were permanently shut-in and plugged in the reporting year quantified?**

(a) For the purposes of this section, the following source types (as specified in part 98, subpart W of this chapter) constitute emissions directly attributable to an offshore petroleum and natural gas production or onshore petroleum and natural gas production well:

(1) Wellhead equipment leaks.

(2) Liquids unloading.

(3) Workovers with hydraulic fracturing.

(4) Workovers without hydraulic fracturing.

(b) Calculate the annual emissions attributable to each well that was permanently shut-in and plugged during the reporting year and included in the submittal pursuant to § 99.51 using Equations E-1, E-3 or E-4 of this section, as applicable.

(1) For onshore petroleum and natural gas production wells that are part of a WEC applicable facility that are permanently shut-in and plugged in reporting years 2025 and later:

(i) Equation E-1 of this section must be used to quantify the methane emissions directly attributable to each permanently shut-in and plugged well.

$$E_{PW,CH_4} = E_{Leaks,CH_4} + E_{LU,CH_4} + E_{WwHF,CH_4} + E_{WwoHF,CH_4} \quad \text{(Eq. E-1)}$$

Where:

| | | |
|---|---|---|
| $E_{PW,CH4}$ | = | The annual quantity of methane emissions directly attributable to an individual well that was permanently shut-in and plugged during the reporting year in accordance with all applicable closure requirements at a WEC applicable facility, mt $CH_4$. |
| $E_{Leaks,CH4}$ | = | The annual quantity of methane emissions attributable to the well from wellhead equipment leaks as calculated using Equation E-2A or E-2B of this section, as applicable, for the reporting year, mt $CH_4$. |
| $E_{LU,CH4}$ | = | The annual quantity of methane emissions attributable to the well from liquids unloading as reported pursuant to proposed § 98.236(f)(1)(x) or (f)(2)(viii) of this chapter, as applicable, for the reporting year, mt $CH_4$. |

$E_{WwHF,CH4}$ = The quantity of methane emissions attributable to the well from workovers with hydraulic fracturing as reported pursuant to proposed § 98.236(g)(9) of this chapter for the reporting year, mt $CH_4$.

$E_{WwoHF,CH4}$ = The quantity of methane emissions attributable to the well from workovers without hydraulic fracturing and without flaring as reported pursuant to proposed § 98.236(h)(3)(iv) of this chapter for the reporting year, mt $CH_4$.

(ii) If equipment leak surveys were used to quantify methane emissions from the permanently shut-in and plugged well and reported pursuant to § 98.236(q) of this chapter in the part 98 report for a WEC applicable facility, Equation E-2A of this section must be used to calculate $E_{Leaks,CH4}$.

$$E_{Leaks,CH_4} = \sum_{p=1}^{N_p} \left( EF_p \times \sum_{z=1}^{x_p} T_{p,z} \right) \times M_{CH_4} \times k \times \rho_{CH_4} \times 10^{-3} \text{(Eq. E-2A)}$$

Where:

$E_{Leaks,CH4}$ = The annual quantity of methane emissions attributable to the well from wellhead equipment leaks as reported pursuant to § 98.236(q) of this chapter for the reporting year, mt $CH_4$.

p = Component type as specified in proposed § 98.233(q)(2)(iii) of this chapter.

$N_p$ = The number of component types with detected leaks at the well.

$EF_p$ = The leaker emission factor for component "p" as specified in proposed § 98.233(q)(2)(iii) of this chapter, scf whole gas/hour/component.

$M_{CH4}$ = The mole fraction of $CH_4$ in produced gas for the sub-basin associated with the well, as reported pursuant to proposed § 98.236(aa)(1)(ii)(I), unitless.

$x_p$ = The total number of specific components of type "p" detected as leaking at the permanently shut-in and plugged well in any leak survey during the year. A component found leaking in two or more surveys during the year is counted as one leaking component.

$T_{p,z}$ = The total time the surveyed component "z" of component type "p" was assumed to be leaking. If one leak detection survey is conducted in the calendar year, assume the component was leaking from the beginning of the reporting year until the date the well was plugged in accordance with § 99.51(a)(2), hours; assume a component found leaking in the last survey of the year was leaking from the preceding survey through the date the well was plugged in accordance with § 99.51(a)(2), hours; assume a component found leaking in a survey between the first and last surveys of

| | | |
|---|---|---|
| | | the year was leaking since the preceding survey until the date the well was plugged in accordance with § 99.51(a)(2), hours; and sum times for all leaking periods. For each leaking component, account for time the component was not operational (*i.e.*, not operating under pressure) using an engineering estimate based on best available data. |
| k | = | The factor to adjust for undetected leaks by respective leak detection method, where k equals 1.25 for the methods in proposed § 98.234 (a)(1), (3) and (5) of this chapter; k equals 1.55 for the method in proposed § 98.234(a)(2)(i) of this chapter; and k equals 1.27 for the method in proposed § 98.234(a)(2)(ii) of this chapter. Select the factor for the leak detection method used for the permanently shut-in and plugged well, unitless. |
| $\rho_{CH4}$ | = | Density of methane, 0.0192 mt/Mscf. |
| $10^{-3}$ | = | Conversion factor from scf to Mscf. |

(iii) If equipment leaks by population count were used to quantify methane emission from the permanently shut-in and plugged well and reported pursuant to § 98.236(r) of this chapter in the part 98 report for a WEC applicable facility, Equation E-2B of this section must be used to calculate $E_{Leaks,CH4.}$

$$E_{Leaks,CH_4} = EF_{wh} \times M_{CH_4} \times T \times \rho_{CH_4} \times 10^{-3} \quad \text{(Eq. E-2B)}$$

Where:

| | | |
|---|---|---|
| $E_{Leaks,CH4}$ | = | The annual quantity of methane emissions attributable to the well from wellhead equipment leaks as reported pursuant to § 98.236(r) of this chapter for the reporting year, mt $CH_4$. |
| $EF_{wh}$ | = | The population emission factor for wellheads, as listed in proposed Table W-1 of subpart W of part 98 of this chapter, scf whole gas/hour/wellhead. |
| $M_{CH4}$ | = | The mole fraction of $CH_4$ in produced gas for the sub-basin associated with the well as reported pursuant to proposed § 98.236(aa)(1)(ii)(I) of this chapter, unitless. |
| T | = | The total time that has elapsed from the beginning of the reporting year until the date the well was plugged in accordance with § 99.51(a)(2), hours. |
| $P_{CH4}$ | = | Density of methane, 0.0192 mt/Mscf. |
| $10^{-3}$ | = | Conversion factor from scf to Mscf. |

(2) For onshore petroleum and natural gas production wells that are part of a WEC applicable facility that are permanently shut-in and plugged in reporting year 2024, Equation E-3 of this section must be used to quantify the methane emissions attributable to the well:

$$E_{PW,CH_4} = (E_{LkQ,CH_4} + E_{LkR,CH_4} + E_{LU,CH_4} + E_{Ww,HF,CH_4} + E_{WwoHF,CH_4}) \times \frac{\left(\frac{Q_{ng,PW}}{6}\right) + Q_{oil,PW} + Q_{cond,PW}}{\left(\frac{Q_{ng,WAF}}{6}\right) + Q_{oil,WAF} + Q_{cond,WAF}} \text{(Eq. E-3)}$$

Where:

| | | |
|---|---|---|
| $E_{PW,CH4}$ | = | The annual quantity of methane emissions attributable to an individual well that was permanently shut-in and plugged during the reporting year in accordance with all applicable closure requirements at a WEC applicable facility, mt $CH_4$. |
| $E_{LkQ}$ | = | The WEC applicable facility total annual quantity of methane emissions from equipment leaks reported pursuant to proposed § 98.236(q)(2)(ix) of this chapter for the reporting year, mt $CH_4$. |
| $E_{LkR}$ | = | The WEC applicable facility total annual quantity of methane emissions from equipment leaks reported pursuant to proposed § 98.236(r)(1)(vi) of this chapter for the reporting year, mt $CH_4$. |
| $E_{LU}$ | = | The WEC applicable facility total annual quantity of methane emissions from liquids unloading as reported pursuant to proposed §§ 98.236(f)(1)(x) and (f)(2)(viii) of this chapter for the reporting year, mt $CH_4$. |
| $E_{WwHF}$ | = | The WEC applicable facility total annual quantity of methane emissions from workovers with hydraulic fracturing as reported pursuant to proposed § 98.236(g)(9) of this chapter for the reporting year, mt $CH_4$. |
| $E_{WwoHF}$ | = | The WEC applicable facility total annual quantity of methane emissions from workovers without hydraulic fracturing as reported pursuant to proposed § 98.236(h)(3)(iv) of this chapter for the reporting year, mt $CH_4$. |
| $Q_{ng,PW}$ | = | The total annual quantity of natural gas that is produced and sent to sale from the well in the reporting year, as reported pursuant to proposed § 98.236(aa)(1)(iii)(C) of this chapter, in thousand standard cubic feet. |
| 6 | = | Conversion factor from thousand standard cubic feet of natural gas to barrel of oil equivalent. |
| $Q_{oil,PW}$ | = | The total quantity of crude oil that is produced and sent to sale from the well in the reporting year, as reported pursuant to proposed § 98.236(aa)(1)(iii)(D) of this chapter, in barrels. |
| $Q_{cond,PW}$ | = | The total quantity of condensate that is produced and sent to sale from the well in the reporting year, as reported pursuant to proposed § 98.236(aa)(1)(iii)(E) of this chapter, in barrels. |

$Q_{ng,WAF}$ = The total quantity of natural gas that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to proposed § 98.236(aa)(1)(i)(B) of this chapter, in thousand standard cubic feet.

$Q_{oil,WAF}$ = The total quantity of crude oil that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to proposed § 98.236(aa)(1)(i)(C) of this chapter, in barrels.

$Q_{cond,WAF}$ = The total quantity of condensate that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to proposed § 98.236(aa)(1)(i)(D) of this chapter, in barrels.

(3) For offshore petroleum and natural gas production wells that are part of a WEC applicable facility that are permanently shut-in and plugged in any reporting year, Equation E-4 of this section must be used to quantify the methane emissions attributable to the well.

$$E_{PW,CH_4} = (E_{Leaks,CH_4}) \times \frac{\left(\frac{Q_{ng,PW}}{6}\right) + Q_{oil,PW} + Q_{cond,PW}}{\left(\frac{Q_{ng,WAF}}{6}\right) + Q_{oil,WAF} + Q_{cond,WAF}} \text{(Eq. E-4)}$$

Where:

$E_{PW,CH4}$ = The annual quantity of methane emissions attributable to an individual well that was permanently shut-in and plugged during the reporting year in accordance with all applicable closure requirements at a WEC applicable facility, mt $CH_4$.

$E_{Leaks,CH4}$ = The WEC applicable facility total annual quantity of methane emissions from non-compressor component level fugitives (*i.e.*, equipment leaks) reported pursuant to proposed § 98.236(s)(3)(ii) of this chapter for the reporting year, mt $CH_4$.

$Q_{ng,PW}$ = The total annual quantity of natural gas that is produced and sent to sale from the well in the reporting year as reported pursuant to proposed § 98.236(aa)(2)(iv) of this chapter, in thousand scf.

6 = Conversion factor from thousand standard cubic feet of natural gas to barrel of oil equivalent.

$Q_{oil,PW}$ = The total quantity of crude oil that is produced and sent to sale from the well in the reporting year, as reported pursuant to proposed § 98.236(aa)(2)(v) of this chapter, in barrels.

$Q_{cond,PW}$ = The total quantity of condensate that is produced and sent to sale from the well in the reporting year, as reported pursuant to proposed § 98.236(aa)(2)(vi) of this chapter, in barrels.

$Q_{ng,WAF}$ = The total quantity of natural gas that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to proposed § 98.236(aa)(2)(i) of this chapter, in thousand scf.

$Q_{oil,WAF}$ = The total quantity of crude oil that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to proposed § 98.236(aa)(2)(ii) of this chapter, in barrels.

$Q_{cond,WAF}$ = The total quantity of condensate that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to proposed § 98.236(aa)(2)(iii) of this chapter, in barrels.

(c) Calculate the total emissions attributable to all wells included in the submittal received pursuant to § 99.51 using Equation E-5 of this section:

$$E_{Plug,CH_4} = \sum_{j=1}^{N} E_{PW,CH_4} \text{(Eq. E-5)}$$

$E_{Plug,CH4}$ = The total quantity of annual methane emissions, as determined in subpart E of this part, at the WEC applicable facility in the onshore petroleum and natural gas production and offshore petroleum and natural gas production industry segments, attributable to all wells that were permanently shut-in and plugged during the reporting year in accordance with all applicable closure requirements, mt $CH_4$.

$E_{PW,CH4}$ = The annual quantity of methane emissions attributable to a well "j" that was permanently shut-in and plugged during the reporting year in accordance with all applicable closure requirements at a WEC applicable facility calculated using Equation E-1, E-3, or E-4 of this section, as applicable.

N = Total number of wells that were permanently shut-in and plugged during the reporting year in accordance with all applicable closure requirements at a WEC applicable facility.

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