United States Environmental Protection Agency

Summary of Public Comments and Responses for Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions

This document, which is available in the docket for this rulemaking, replaces the version posted to EPA's website the morning of November 12, 2024. The version posted to EPA's website on November 12, 2024, had added missing spaces and made other non-substantive typographical corrections but is not available in the rulemaking docket.

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[November] 2024

Summary of Public Comments and Responses for Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions

U. S. Environmental Protection Agency
Office of Air and Radiation
Office of Air Policy and Program Support
Washington D.C. 20460

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U.S. Environmental Protection Agency

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List of Acronyms and Abbreviations

AAPG	American Association of Petroleum Geologists
API	American Petroleum Institute
BOEM	Bureau of Ocean Energy Management
CAA	Clean Air Act
CBI	confidential business information
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
EOR	enhanced oil recovery
EPA	U.S. Environmental Protection Agency
ET	Eastern time
FR	Federal Register
GHG	greenhouse gas
GHGRP	Greenhouse Gas Reporting Program
GOR	gas-to-oil ratio
IRA	Inflation Reduction Act of 2022
ICR	Information Collection Request
LDC	local distribution company
LNG	liquified natural gas
MERP	Methane Emissions Reduction Program
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
NSPS	new source performance standards

OGI	optical gas imaging
OMB	Office of Management and Budget
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

Introduction

This document provides the U.S. Environmental Protection Agency (EPA)'s response to public comments on Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions. The EPA published a Notice of Proposed Rulemaking in the Federal Register on January 26, 2024 (89 FR 05318, hereafter referred to as the "2024 WEC Proposal").

The Environmental Protection Agency (EPA) is promulgating a regulation to implement the requirements of section 136 of the Clean Air Act (CAA), also known as the Methane Emissions Reduction Program (MERP). Enacted as part of the Inflation Reduction Act (IRA), this program requires the EPA to impose and collect an annual charge on methane emissions that exceed waste emissions thresholds specified by Congress. The EPA must collect such charges from owners or operators of applicable facilities that report more than 25,000 metric tons (mt) of carbon dioxide equivalent (CO_2e) of greenhouse gases (GHG) per year pursuant to the petroleum and natural gas systems source category requirements of the Greenhouse Gas Reporting Rule (GHGRP), and that exceed methane emissions intensity thresholds set forth in CAA section 136 for different types of applicable facilities. This rule finalizes calculation procedures, flexibilities, and exemptions required to implement provisions of the CAA related to the waste emissions charge (WEC) and establishes confidentiality determinations for data elements included in waste emissions charge filings.

During the 60-day public comment period, the EPA received comment letters from industry representatives and associations, environmental organizations, technology manufacturers and vendors, and private citizens in response to the January 26, 2024, proposal. This document provides the EPA's responses to public comments regarding the proposal. Each of these comments were reviewed and significant comments relevant to this action have been summarized and included in this document. For each comment, the identity of the commenter and the document control number (DCN) assigned to the comment letter are provided. Where possible, the EPA separated comments on specific topics into categories. Within categories, similar comment excerpts from multiple commenters were combined into a group of comments with a single response. However, in some cases, commenters made broad statements about the proposed rule or general comments on the approach that could not be easily separated by topic or category without potentially affecting the intended meaning of the commenter's statements. In such cases, we referred the reader to the response to another similar comment.

The EPA's responses to comments are generally provided immediately following each comment. In some cases, the EPA provided responses to specific comments or groups of similar comments in the preamble to the final rulemaking. Rather than repeating those responses in this document, the EPA has referenced the preamble to the final rule. In some cases, a commenter incorporated by reference the comments of another company or organization. Rather than repeat these comment excerpts for each commenter, the EPA has listed the comment excerpt only once under the name of the person, company or organization who submitted the comment and included a list of commenters who indicated their support for that comment in a footnote to the List of Commenters.

Copies of all comments submitted are available electronically through http://www.regulations.gov by searching Docket ID. No. EPA-HQ-OAR-2023-0434.[1]

[1] See also: https://www.epa.gov/dockets

List of Commenters

Document Control Number	Commenter
EPA-HQ-OAR-2023-0434-0138	Michael Ravnitzy
EPA-HQ-OAR-2023-0434-0139	GPA Midstream Association
EPA-HQ-OAR-2023-0434-0140	American Petroleum Institute (API)[a]
EPA-HQ-OAR-2023-0434-0141	Kirk Frost
EPA-HQ-OAR-2023-0434-0142	Independent Petroleum Association of America (IPAA)[b]
EPA-HQ-OAR-2023-0434-0143	Dominique Dashwood
EPA-HQ-OAR-2023-0434-0144	David Toon
EPA-HQ-OAR-2023-0434-0145	American Fuel and Petrochemical Manufacturers (AFPM)
EPA-HQ-OAR-2023-0434-0146	Deni Marshall
EPA-HQ-OAR-2023-0434-0147	Deni Marshall
EPA-HQ-OAR-2023-0434-0148	American Exploration and Production Council (AXPC)[c]
EPA-HQ-OAR-2023-0434-0149	Matthew Lee
EPA-HQ-OAR-2023-0434-0150	Encino Environmental Services
EPA-HQ-OAR-2023-0434-0152	Michael Matchell
EPA-HQ-OAR-2023-0434-0153	Lindsay Garcia
EPA-HQ-OAR-2023-0434-0154	Evangelical Environmental Network (EEN)
EPA-HQ-OAR-2023-0434-0155	Anna Shoup
EPA-HQ-OAR-2023-0434-0156	Imelda Rodriguez Benavides
EPA-HQ-OAR-2023-0434-0157	Jack Joseph
EPA-HQ-OAR-2023-0434-0158	Lauri Costello
EPA-HQ-OAR-2023-0434-0159	Hannah Miller
EPA-HQ-OAR-2023-0434-0160	Annika Barron
EPA-HQ-OAR-2023-0434-0161	Joshua Groeling
EPA-HQ-OAR-2023-0434-0162	Evangelical Environmental Network
EPA-HQ-OAR-2023-0434-0163	Jaime Butler
EPA-HQ-OAR-2023-0434-0165	Miller/Howard Investments, Inc.
EPA-HQ-OAR-2023-0434-0166	Offshore Operators Committee (OOC) and National Ocean Industries Association (NOIA)
EPA-HQ-OAR-2023-0434-0167	Ethan Johan
EPA-HQ-OAR-2023-0434-0168	Tommy O'Brien
EPA-HQ-OAR-2023-0434-0169	Ohio Environmental Protection Agency
EPA-HQ-OAR-2023-0434-0170	Physicians for Social Responsibility
EPA-HQ-OAR-2023-0434-0171	Hailey Nguyen
EPA-HQ-OAR-2023-0434-0172	Kairos Aeroscape
EPA-HQ-OAR-2023-0434-0173	Office of the People's Council of DC
EPA-HQ-OAR-2023-0434-0174	Kim Anderson
EPA-HQ-OAR-2023-0434-0175	Joshua Groeling
EPA-HQ-OAR-2023-0434-0176	National Wildlife Federation Action Fund

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EPA-HQ-OAR-2023-0434-0177	Environmental Action
EPA-HQ-OAR-2023-0434-0178	Environment America
EPA-HQ-OAR-2023-0434-0179	As You Sow
EPA-HQ-OAR-2023-0434-0180	Duchesne County (UT)
EPA-HQ-OAR-2023-0434-0181	Environmental Defense Fund
EPA-HQ-OAR-2023-0434-0182	Ronald Perry Walker
EPA-HQ-OAR-2023-0434-0183	American Academy of Pediatrics
EPA-HQ-OAR-2023-0434-0184	Ceres Inc
EPA-HQ-OAR-2023-0434-0185	Muzyl Oil Corporation
EPA-HQ-OAR-2023-0434-0186	Public Land Solutions
EPA-HQ-OAR-2023-0434-0187	LongPath Technologies
EPA-HQ-OAR-2023-0434-0188	California State Teachers' Retirement System
EPA-HQ-OAR-2023-0434-0189	Indiana Oil and Gas Association
EPA-HQ-OAR-2023-0434-0190	Jason Humphrey
EPA-HQ-OAR-2023-0434-0191	Anonymous public comment
EPA-HQ-OAR-2023-0434-0192	Olivia M. Bergenholtz
EPA-HQ-OAR-2023-0434-0193	Diversified Energy
EPA-HQ-OAR-2023-0434-0194	Muskegon Energy Company
EPA-HQ-OAR-2023-0434-0195	Phillip Koro
EPA-HQ-OAR-2023-0434-0196	Kansas Independent Oil and Gas Association (KIOGA)[d]
EPA-HQ-OAR-2023-0434-0197	Circle 9 Resources LLC
EPA-HQ-OAR-2023-0434-0198	Muskegon Operating Company
EPA-HQ-OAR-2023-0434-0199	Ascent Resources
EPA-HQ-OAR-2023-0434-0200	Runners for Public Lands
EPA-HQ-OAR-2023-0434-0201	Madeline Armstrong
EPA-HQ-OAR-2023-0434-0202	Coterra Energy
EPA-HQ-OAR-2023-0434-0203	Anonymous public comment
EPA-HQ-OAR-2023-0434-0204	Missouri DNR
EPA-HQ-OAR-2023-0434-0205	Context Labs
EPA-HQ-OAR-2023-0434-0206	Wyoming Oil and Gas Conservation Commission
EPA-HQ-OAR-2023-0434-0207	Missaukee Oil and Gas Company LLC
EPA-HQ-OAR-2023-0434-0208	Diamondback Energy, Inc.
EPA-HQ-OAR-2023-0434-0209	Altavista Energy, Inc.
EPA-HQ-OAR-2023-0434-0210	Occidental Petroleum (Oxy)
EPA-HQ-OAR-2023-0434-0211	Range Resources
EPA-HQ-OAR-2023-0434-0212	Independent Petroleum Association of America (IPAA)
EPA-HQ-OAR-2023-0434-0213	Michigan Oil & Gas Association (MOGA)[e]
EPA-HQ-OAR-2023-0434-0214	Petroleum Association of Wyoming (PAW)
EPA-HQ-OAR-2023-0434-0215	Vaquero Uinta LLC et al.

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EPA-HQ-OAR-2023-0434-0216	North Dakota Department of Environmental Quality and North Dakota Department of Mineral Resources
EPA-HQ-OAR-2023-0434-0217	EOS at Federated Hermes Limited
EPA-HQ-OAR-2023-0434-0218	American Lung Association et al.
EPA-HQ-OAR-2023-0434-0219	British Columbia Investment Management Corporation (BCI)
EPA-HQ-OAR-2023-0434-0220	Senator Capito
EPA-HQ-OAR-2023-0434-0221	State of Utah, Public Lands Policy Coordinating Office
EPA-HQ-OAR-2023-0434-0222	Mull Drilling Company, Inc
EPA-HQ-OAR-2023-0434-0223	Environmental Law & Policy Center (ELPC)
EPA-HQ-OAR-2023-0434-0224	Ohio Oil & Gas Association (OOGA)
EPA-HQ-OAR-2023-0434-0225	Wespath Benefits and Investments
EPA-HQ-OAR-2023-0434-0226	Eastern Kansas Oil and Gas Association (EKOGA)[f]
EPA-HQ-OAR-2023-0434-0227	Center for Biological Diversity et al.
EPA-HQ-OAR-2023-0434-0228	Iconoclast Industries, LLC.
EPA-HQ-OAR-2023-0434-0229	West Virginia Office of the Attorney General et al.
EPA-HQ-OAR-2023-0434-0230	Marathon Oil Company
EPA-HQ-OAR-2023-0434-0231	Ute Indian Tribe of the Uintah and Ouray Reservation
EPA-HQ-OAR-2023-0434-0232	Mehana Witthans
EPA-HQ-OAR-2023-0434-0233	Liveable Arlington
EPA-HQ-OAR-2023-0434-0234	North Bay Energy
EPA-HQ-OAR-2023-0434-0235	Kentucky Oil and Gas Association (KOGA)
EPA-HQ-OAR-2023-0434-0236	National Tribal Air Association (NTAA)
EPA-HQ-OAR-2023-0434-0237	EnerVest Operating, LLC
EPA-HQ-OAR-2023-0434-0238	Wyoming Department of Environmental Quality (WDEQ)
EPA-HQ-OAR-2023-0434-0239	Endeavor Energy Resources, L.P.
EPA-HQ-OAR-2023-0434-0240	Arkansas Independent Producers and Royalty Owners (AIPRO)
EPA-HQ-OAR-2023-0434-0241	Joyce Weir
EPA-HQ-OAR-2023-0434-0242	Douglas E. Wlson
EPA-HQ-OAR-2023-0434-0243	Akhil Sharma
EPA-HQ-OAR-2023-0434-0244	linda skillett
EPA-HQ-OAR-2023-0434-0245	Perry Kendall
EPA-HQ-OAR-2023-0434-0246	Kate Considine
EPA-HQ-OAR-2023-0434-0247	Tanya Beyer Hovi
EPA-HQ-OAR-2023-0434-0248	Dagmar Buchner
EPA-HQ-OAR-2023-0434-0249	Jeremy Ehrlich
EPA-HQ-OAR-2023-0434-0250	Felix Mbuga
EPA-HQ-OAR-2023-0434-0251	Shaina Oliver
EPA-HQ-OAR-2023-0434-0252	Denise Williams

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EPA-HQ-OAR-2023-0434-0253	Herbert Scholle
EPA-HQ-OAR-2023-0434-0254	Stephanie McDaniel-Gilman
EPA-HQ-OAR-2023-0434-0255	Joe Murphy
EPA-HQ-OAR-2023-0434-0256	Anonymous public comment
EPA-HQ-OAR-2023-0434-0257	Kiana B
EPA-HQ-OAR-2023-0434-0258	Joyce Wasserman
EPA-HQ-OAR-2023-0434-0259	Marie Miglin
EPA-HQ-OAR-2023-0434-0260	Rain Zohav
EPA-HQ-OAR-2023-0434-0261	Cantor Michael Zoosman
EPA-HQ-OAR-2023-0434-0262	Randy Fleitman
EPA-HQ-OAR-2023-0434-0263	Shoshana Brown
EPA-HQ-OAR-2023-0434-0264	Isabella Penaloza
EPA-HQ-OAR-2023-0434-0265	Anonymous public comment
EPA-HQ-OAR-2023-0434-0266	Catherine Wolfram
EPA-HQ-OAR-2023-0434-0267	Permian Basin Petroleum Association (PBPA)
EPA-HQ-OAR-2023-0434-0268	Ovintiv Inc.
EPA-HQ-OAR-2023-0434-0269	GHGSat Inc.
EPA-HQ-OAR-2023-0434-0270	Office of the Wyoming Governor
EPA-HQ-OAR-2023-0434-0271	Offshore Operators Committee (OOC)
EPA-HQ-OAR-2023-0434-0272	ConocoPhillips
EPA-HQ-OAR-2023-0434-0273	Marcellus Shale Coalition (MSC)[g]
EPA-HQ-OAR-2023-0434-0274	BP America, Inc.
EPA-HQ-OAR-2023-0434-0275	INNIO Waukesha Engine
EPA-HQ-OAR-2023-0434-0276	American Exploration and Production Council (AXPC)
EPA-HQ-OAR-2023-0434-0277	California Public Employees' Retirement System (CalPERS)
EPA-HQ-OAR-2023-0434-0278	The Petroleum Alliance of Oklahoma
EPA-HQ-OAR-2023-0434-0279	Caerus Operating LLC.
EPA-HQ-OAR-2023-0434-0280	Texas Pipeline Association (TPA)
EPA-HQ-OAR-2023-0434-0281	Independent Petroleum Association of New Mexico (IPANM)
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EPA-HQ-OAR-2023-0434-0283	American Free Enterprise Chamber of Commerce, Center for Legal Action and Michigan Oil and Gas Association[h]
EPA-HQ-OAR-2023-0434-0284	Kinder Morgan, Inc.
EPA-HQ-OAR-2023-0434-0285	Governor Mark Gordon
EPA-HQ-OAR-2023-0434-0286	BlueGreen Alliance
EPA-HQ-OAR-2023-0434-0287	GPA Midstream Association (GPA)
EPA-HQ-OAR-2023-0434-0288	Miller Energy Company, LLC
EPA-HQ-OAR-2023-0434-0289	Western Energy Alliance

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EPA-HQ-OAR-2023-0434-0292	Taxpayers for Common Sense (TCS)
EPA-HQ-OAR-2023-0434-0293	Texas Commission on Environmental Quality (TCEQ) and the Railroad Commission of Texas (RRC)
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EPA-HQ-OAR-2023-0434-0295	Oklahoma Energy Producers Alliance (OEPA)
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EPA-HQ-OAR-2023-0434-0297	Texas Alliance of Energy Producers
EPA-HQ-OAR-2023-0434-0298	U.S. Chamber of Commerce
EPA-HQ-OAR-2023-0434-0299	Boyden Gray PLLC
EPA-HQ-OAR-2023-0434-0300	National Stripper Well Association (NSWA)
EPA-HQ-OAR-2023-0434-0301	Climate Protection and Restoration Initiative[i]
EPA-HQ-OAR-2023-0434-0302	Mario Loyola and Kevin Dayaratna
EPA-HQ-OAR-2023-0434-0303	Jeff Stedifor
EPA-HQ-OAR-2023-0434-0304	Dianne Sullivan
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EPA-HQ-OAR-2023-0434-0325	Elaine Erb
EPA-HQ-OAR-2023-0434-0326	Karen Jacques
EPA-HQ-OAR-2023-0434-0327	Environmental Defense Fund

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EPA-HQ-OAR-2023-0434-0332	Mass Mailer - Org. unknown (web)
EPA-HQ-OAR-2023-0434-0333	Mass Mailer - Org. unknown (web)
EPA-HQ-OAR-2023-0434-0334	Mass Mailer - Org. unknown (web)
EPA-HQ-OAR-2023-0434-0335	Mass Mailer - Org. unknown (web)
EPA-HQ-OAR-2023-0434-0336	Mass Mailer - West Virginia Rivers Coalition (WV Rivers)
EPA-HQ-OAR-2023-0434-0337	Mass Mailer - Northern Plains Resource Council
EPA-HQ-OAR-2023-0434-0338	Peter Lang
EPA-HQ-OAR-2023-0434-0339	T W
EPA-HQ-OAR-2023-0434-0340	David Pedersen
EPA-HQ-OAR-2023-0434-0341	Michael Domitrovits
EPA-HQ-OAR-2023-0434-0342	David Williams
EPA-HQ-OAR-2023-0434-0343	Vivian Broadhead
EPA-HQ-OAR-2023-0434-0344	Jimy Tallal
EPA-HQ-OAR-2023-0434-0345	Jonathan Esty
EPA-HQ-OAR-2023-0434-0346	Susan Bonney
EPA-HQ-OAR-2023-0434-0347	Colleen Kennedy
EPA-HQ-OAR-2023-0434-0348	Joanna Buehler
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EPA-HQ-OAR-2023-0434-0365	Roger Reinicker

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EPA-HQ-OAR-2023-0434-0366	Gretchen Van Dyke
EPA-HQ-OAR-2023-0434-0367	Laurel Podrasky
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EPA-HQ-OAR-2023-0434-0369	Tony Lozano
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EPA-HQ-OAR-2023-0434-0374	Jennifer Knauss
EPA-HQ-OAR-2023-0434-0375	Michael Rueli
EPA-HQ-OAR-2023-0434-0376	Sudha Warrier
EPA-HQ-OAR-2023-0434-0377	lloyd bryan
EPA-HQ-OAR-2023-0434-0378	Jo Dutilloy
EPA-HQ-OAR-2023-0434-0379	Tanya Lasuk
EPA-HQ-OAR-2023-0434-0380	go Clemson
EPA-HQ-OAR-2023-0434-0381	Norman Norvelle
EPA-HQ-OAR-2023-0434-0382	Brian Campbell
EPA-HQ-OAR-2023-0434-0383	Cheryl Arney
EPA-HQ-OAR-2023-0434-0384	Dawn Barry-Griffin
EPA-HQ-OAR-2023-0434-0385	Bill and Ida Beaudin
EPA-HQ-OAR-2023-0434-0386	Jodi Mcdaniel
EPA-HQ-OAR-2023-0434-0387	Carolyn Amparan
EPA-HQ-OAR-2023-0434-0388	Patricia Bond
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EPA-HQ-OAR-2023-0434-0390	Andrew Deubel
EPA-HQ-OAR-2023-0434-0391	Rob Bastien
EPA-HQ-OAR-2023-0434-0392	Mark C Weller
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EPA-HQ-OAR-2023-0434-0404	Yaaqob Yatzilel

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EPA-HQ-OAR-2023-0434-0406	Bernie Meyer
EPA-HQ-OAR-2023-0434-0407	Kent Nusekabel
EPA-HQ-OAR-2023-0434-0408	Guy Wolf
EPA-HQ-OAR-2023-0434-0409	Deborah Kennedy
EPA-HQ-OAR-2023-0434-0410	Allison Perrett
EPA-HQ-OAR-2023-0434-0411	Debra Dunson
EPA-HQ-OAR-2023-0434-0412	Maureen Hayes
EPA-HQ-OAR-2023-0434-0413	R Schatz
EPA-HQ-OAR-2023-0434-0414	Gale Pisha
EPA-HQ-OAR-2023-0434-0415	Kathryn A. McKenzie
EPA-HQ-OAR-2023-0434-0416	Claudia Re
EPA-HQ-OAR-2023-0434-0417	Aaron Schaer
EPA-HQ-OAR-2023-0434-0418	Crystal Ganley
EPA-HQ-OAR-2023-0434-0419	Elizabeth Pape
EPA-HQ-OAR-2023-0434-0420	Elizabeth Campbell
EPA-HQ-OAR-2023-0434-0421	David Schneider
EPA-HQ-OAR-2023-0434-0422	Charles Carpenter
EPA-HQ-OAR-2023-0434-0423	Nancy Horsfield
EPA-HQ-OAR-2023-0434-0424	Charlotte Fremaux
EPA-HQ-OAR-2023-0434-0425	Sean Hickey
EPA-HQ-OAR-2023-0434-0426	Gary Oakes
EPA-HQ-OAR-2023-0434-0427	Mary Kennedy
EPA-HQ-OAR-2023-0434-0428	Anonymous public comment
EPA-HQ-OAR-2023-0434-0429	Alexander Clayton
EPA-HQ-OAR-2023-0434-0430	Kathryn Sedlacek
EPA-HQ-OAR-2023-0434-0431	David and Ingrid Cook
EPA-HQ-OAR-2023-0434-0432	Kathy Verrue-Slater
EPA-HQ-OAR-2023-0434-0433	Mary Paterson
EPA-HQ-OAR-2023-0434-0434	Derrick Hickson
EPA-HQ-OAR-2023-0434-0435	Carolyn Murray
EPA-HQ-OAR-2023-0434-0436	Rebecca Carr
EPA-HQ-OAR-2023-0434-0437	Laura Woodsides
EPA-HQ-OAR-2023-0434-0438	Evan Lawrence
EPA-HQ-OAR-2023-0434-0439	Deborah Brown
EPA-HQ-OAR-2023-0434-0440	Virgina Tarango
EPA-HQ-OAR-2023-0434-0441	Spencer Hoyt
EPA-HQ-OAR-2023-0434-0442	Chris Eaton
EPA-HQ-OAR-2023-0434-0443	Rosa Santos

Document Control Number	Commenter
EPA-HQ-OAR-2023-0434-0444	Jon Brodziak
EPA-HQ-OAR-2023-0434-0445	Todd Day
EPA-HQ-OAR-2023-0434-0446	Amy Posner
EPA-HQ-OAR-2023-0434-0447	Libby Marsh
EPA-HQ-OAR-2023-0434-0448	Mary Wildfire
EPA-HQ-OAR-2023-0434-0449	Peter Furcht
EPA-HQ-OAR-2023-0434-0450	Jay Roberts
EPA-HQ-OAR-2023-0434-0451	Katie Schick
EPA-HQ-OAR-2023-0434-0452	Edward Gertler
EPA-HQ-OAR-2023-0434-0453	jim Woolly
EPA-HQ-OAR-2023-0434-0454	Luann Stubbs
EPA-HQ-OAR-2023-0434-0455	Emily Brandt
EPA-HQ-OAR-2023-0434-0456	Linda Schneider
EPA-HQ-OAR-2023-0434-0457	Susan Yeager
EPA-HQ-OAR-2023-0434-0458	Mary Clark
EPA-HQ-OAR-2023-0434-0459	Morris Letsinger
EPA-HQ-OAR-2023-0434-0460	April Johnson
EPA-HQ-OAR-2023-0434-0461	rahepaydar
EPA-HQ-OAR-2023-0434-0462	Arely Galindo-Sanchez
EPA-HQ-OAR-2023-0434-0463	M Peralta
EPA-HQ-OAR-2023-0434-0464	Carol Slater
EPA-HQ-OAR-2023-0434-0465	BP Casbara
EPA-HQ-OAR-2023-0434-0466	Jeffrey Koon
EPA-HQ-OAR-2023-0434-0467	Stephen Hackney
EPA-HQ-OAR-2023-0434-0468	Jim Steitz
EPA-HQ-OAR-2023-0434-0469	Melanie Abrams
EPA-HQ-OAR-2023-0434-0470	Rose M Palmer
EPA-HQ-OAR-2023-0434-0471	Michael Bucell
EPA-HQ-OAR-2023-0434-0472	Michael Bucell
EPA-HQ-OAR-2023-0434-0473	Lowell Smith
EPA-HQ-OAR-2023-0434-0474	Dale Holzschuh
EPA-HQ-OAR-2023-0434-0475	Jody Benson
EPA-HQ-OAR-2023-0434-0476	Patrick Stoffel
EPA-HQ-OAR-2023-0434-0477	Mary Plummer
EPA-HQ-OAR-2023-0434-0478	Magdalena Sikora
EPA-HQ-OAR-2023-0434-0479	Karen Schademan
EPA-HQ-OAR-2023-0434-0480	Gigi Bell
EPA-HQ-OAR-2023-0434-0481	B. Marcella Martinez
EPA-HQ-OAR-2023-0434-0482	B. Marcella Martinez

Document Control Number	Commenter
EPA-HQ-OAR-2023-0434-0483	Felicity Kelcourse
EPA-HQ-OAR-2023-0434-0484	Meryl Nadel
EPA-HQ-OAR-2023-0434-0485	J Stanelun
EPA-HQ-OAR-2023-0434-0486	Julia Lowe
EPA-HQ-OAR-2023-0434-0487	Eileen Graham
EPA-HQ-OAR-2023-0434-0488	Elizabeth Rohr
EPA-HQ-OAR-2023-0434-0489	Anonymous public comment
EPA-HQ-OAR-2023-0434-0490	Jeff Pierre
EPA-HQ-OAR-2023-0434-0491	Donald Schuld
EPA-HQ-OAR-2023-0434-0492	Gale Quist
EPA-HQ-OAR-2023-0434-0493	Peter Brewer
EPA-HQ-OAR-2023-0434-0494	Andrew McClaine
EPA-HQ-OAR-2023-0434-0495	Kristine Alswager
EPA-HQ-OAR-2023-0434-0496	Anonymous public comment
EPA-HQ-OAR-2023-0434-0497	David Hill
EPA-HQ-OAR-2023-0434-0498	David Gottlieb
EPA-HQ-OAR-2023-0434-0499	Jewish Earth Alliance
EPA-HQ-OAR-2023-0434-0500	Elliott Rabin
EPA-HQ-OAR-2023-0434-0501	James Hatley
EPA-HQ-OAR-2023-0434-0502	Marion Dresner
EPA-HQ-OAR-2023-0434-0503	Mirele Goldsmith
EPA-HQ-OAR-2023-0434-0504	Louise Lipsey
EPA-HQ-OAR-2023-0434-0505	Phyllis Blumberg
EPA-HQ-OAR-2023-0434-0506	Joyce Wasserman
EPA-HQ-OAR-2023-0434-0507	Stephanie Jofe
EPA-HQ-OAR-2023-0434-0508	Ruthellen Mulberg
EPA-HQ-OAR-2023-0434-0509	De Herman
EPA-HQ-OAR-2023-0434-0510	Rabbi Devorah Lynn
EPA-HQ-OAR-2023-0434-0511	Maurie Edelman
EPA-HQ-OAR-2023-0434-0512	Jennifer Trokey
EPA-HQ-OAR-2023-0434-0513	Susan Diamond
EPA-HQ-OAR-2023-0434-0514	Barbara Adler
EPA-HQ-OAR-2023-0434-0515	Anonymous public comment
EPA-HQ-OAR-2023-0434-0516	Dennis Neyman
EPA-HQ-OAR-2023-0434-0517	Laura Klein
EPA-HQ-OAR-2023-0434-0518	Harriet Sepinwall
EPA-HQ-OAR-2023-0434-0519	Linda Boxer
EPA-HQ-OAR-2023-0434-0520	susan farber
EPA-HQ-OAR-2023-0434-0521	Jerilynn Payne

Document Control Number	Commenter
EPA-HQ-OAR-2023-0434-0522	Sheila Kaufman
EPA-HQ-OAR-2023-0434-0523	Iris Astrof
EPA-HQ-OAR-2023-0434-0524	Thea Iberall
EPA-HQ-OAR-2023-0434-0525	Ellen Weiss
EPA-HQ-OAR-2023-0434-0526	Jewish
EPA-HQ-OAR-2023-0434-0527	Lilian Gradofsky
EPA-HQ-OAR-2023-0434-0528	Carolyn Petrakis
EPA-HQ-OAR-2023-0434-0529	Jahnavi Stenflo
EPA-HQ-OAR-2023-0434-0530	Arthur M. Gershkoff MD (retired)
EPA-HQ-OAR-2023-0434-0531	Hallie Bulleit
EPA-HQ-OAR-2023-0434-0532	Shirley Huang
EPA-HQ-OAR-2023-0434-0533	Ruth Charloff
EPA-HQ-OAR-2023-0434-0534	Constance Hester
EPA-HQ-OAR-2023-0434-0535	Kyla Holton
EPA-HQ-OAR-2023-0434-0536	Ryan Ahn
EPA-HQ-OAR-2023-0434-0537	Kathleen LoGiudice
EPA-HQ-OAR-2023-0434-0538	Linda Fitzgerald
EPA-HQ-OAR-2023-0434-0539	AMBER Lamph
EPA-HQ-OAR-2023-0434-0540	Mary Suagee-Beauduy
EPA-HQ-OAR-2023-0434-0541	Maryse Sagewynd
EPA-HQ-OAR-2023-0434-0542	David Deprez
EPA-HQ-OAR-2023-0434-0543	Jessica Delia
EPA-HQ-OAR-2023-0434-0544	Kathryn Kathryn
EPA-HQ-OAR-2023-0434-0545	Stacey Urbanz
EPA-HQ-OAR-2023-0434-0546	Gwendolyn Jones
EPA-HQ-OAR-2023-0434-0547	Heidi Davison
EPA-HQ-OAR-2023-0434-0548	Pam Mckniff
EPA-HQ-OAR-2023-0434-0549	Grason Weinstein
EPA-HQ-OAR-2023-0434-0550	Mark Glenn
EPA-HQ-OAR-2023-0434-0551	Christine Liberatore
EPA-HQ-OAR-2023-0434-0552	Suzanne Coleman
EPA-HQ-OAR-2023-0434-0553	Jacquelyn Halverson
EPA-HQ-OAR-2023-0434-0554	Brad Snyder
EPA-HQ-OAR-2023-0434-0555	Karen Wilson
EPA-HQ-OAR-2023-0434-0556	Kayla Campasino
EPA-HQ-OAR-2023-0434-0557	Kelly Maugherman
EPA-HQ-OAR-2023-0434-0558	Terry Langan
EPA-HQ-OAR-2023-0434-0559	Kay Anderson
EPA-HQ-OAR-2023-0434-0560	Chad Keinanen

Document Control Number	Commenter
EPA-HQ-OAR-2023-0434-0561	Terri Mickelsen
EPA-HQ-OAR-2023-0434-0562	Mary Clark
EPA-HQ-OAR-2023-0434-0563	Nancy Melvin
EPA-HQ-OAR-2023-0434-0564	Liz Stone
EPA-HQ-OAR-2023-0434-0565	William Sandercock
EPA-HQ-OAR-2023-0434-0566	Anonymous public comment
EPA-HQ-OAR-2023-0434-0567	Diane Arbour
EPA-HQ-OAR-2023-0434-0568	Anonymous public comment
EPA-HQ-OAR-2023-0434-0569	Susan Patla
EPA-HQ-OAR-2023-0434-0570	Hilary ODonnell
EPA-HQ-OAR-2023-0434-0571	Anonymous public comment
EPA-HQ-OAR-2023-0434-0572	Akilah Trogdon
EPA-HQ-OAR-2023-0434-0573	Tyler Partee
EPA-HQ-OAR-2023-0434-0574	Amanda Wilson
EPA-HQ-OAR-2023-0434-0575	Karen Campbell
EPA-HQ-OAR-2023-0434-0576	Carl B. and Pamela Lechner
EPA-HQ-OAR-2023-0434-0577	Glub Shitto
EPA-HQ-OAR-2023-0434-0578	Kelsey Keyes
EPA-HQ-OAR-2023-0434-0579	Paul Stipe
EPA-HQ-OAR-2023-0434-0580	Charles Cutler
EPA-HQ-OAR-2023-0434-0581	Sheila Newtown
EPA-HQ-OAR-2023-0434-0582	Andrea Kramer
EPA-HQ-OAR-2023-0434-0583	Daniel Diehl
EPA-HQ-OAR-2023-0434-0584	Jan Boudart
EPA-HQ-OAR-2023-0434-0585	Marian Roh
EPA-HQ-OAR-2023-0434-0586	Frances Scullion-Hazam
EPA-HQ-OAR-2023-0434-0587	Alexandra Bely
EPA-HQ-OAR-2023-0434-0588	James L. Wrolstad
EPA-HQ-OAR-2023-0434-0589	Joan Mason
EPA-HQ-OAR-2023-0434-0590	Esther Rayah
EPA-HQ-OAR-2023-0434-0591	Michael Petelle
EPA-HQ-OAR-2023-0434-0592	Leslie Baken
EPA-HQ-OAR-2023-0434-0593	Judith Thayer
EPA-HQ-OAR-2023-0434-0594	Sharon Condron
EPA-HQ-OAR-2023-0434-0595	Michael Davis
EPA-HQ-OAR-2023-0434-0596	Jenny Clevidence
EPA-HQ-OAR-2023-0434-0597	Don Kemper
EPA-HQ-OAR-2023-0434-0598	Michael Allen
EPA-HQ-OAR-2023-0434-0599	Brian Kistler

Document Control Number	Commenter
EPA-HQ-OAR-2023-0434-0600	Sarah Krall
EPA-HQ-OAR-2023-0434-0601	Rachel Ney
EPA-HQ-OAR-2023-0434-0602	Jennifer Knighton
EPA-HQ-OAR-2023-0434-0603	Russell Foszcz
EPA-HQ-OAR-2023-0434-0604	Sarah Lindo
EPA-HQ-OAR-2023-0434-0605	Hal Brannan
EPA-HQ-OAR-2023-0434-0606	Patrick Griffin
EPA-HQ-OAR-2023-0434-0607	Jan Novak
EPA-HQ-OAR-2023-0434-0608	Karen Jacques
EPA-HQ-OAR-2023-0434-0609	Maureen Kivney
EPA-HQ-OAR-2023-0434-0610	Kristine Alswager
EPA-HQ-OAR-2023-0434-0611	Jeffrey Oremland
EPA-HQ-OAR-2023-0434-0612	BettyAnn Brody Bucksbaum
EPA-HQ-OAR-2023-0434-0613	Charlotte Keys
EPA-HQ-OAR-2023-0434-0614	Zemriah Todd
EPA-HQ-OAR-2023-0434-0615	Celeste Racano
EPA-HQ-OAR-2023-0434-0616	Chrys Morris
EPA-HQ-OAR-2023-0434-0617	Mick Clark
EPA-HQ-OAR-2023-0434-0618	Sydney Pitcher
EPA-HQ-OAR-2023-0434-0619	Nelson Young
EPA-HQ-OAR-2023-0434-0620	Judy Berlfein
EPA-HQ-OAR-2023-0434-0621	Ronald Martin
EPA-HQ-OAR-2023-0434-0622	Herlinda Gonzalez
EPA-HQ-OAR-2023-0434-0623	Barbara Winner
EPA-HQ-OAR-2023-0434-0624	Dave Clark
EPA-HQ-OAR-2023-0434-0625	Donna Gleason
EPA-HQ-OAR-2023-0434-0626	Marty DuBois
EPA-HQ-OAR-2023-0434-0627	Suzanne Yeaman
EPA-HQ-OAR-2023-0434-0628	Anonymous public comment
EPA-HQ-OAR-2023-0434-0629	Mirele Goldsmith
EPA-HQ-OAR-2023-0434-0630	Jim Steitz
EPA-HQ-OAR-2023-0434-0631	Linda Kade
EPA-HQ-OAR-2023-0434-0632	Steve Latch
EPA-HQ-OAR-2023-0434-0633	Ann Harvey
EPA-HQ-OAR-2023-0434-0634	Ernst Mecke
EPA-HQ-OAR-2023-0434-0635	Laura Mazar
EPA-HQ-OAR-2023-0434-0636	Luke Mar
EPA-HQ-OAR-2023-0434-0637	William Katzin
EPA-HQ-OAR-2023-0434-0638	Bruce Hlodnicki

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EPA-HQ-OAR-2023-0434-0639	Sharon and Park Furlong
EPA-HQ-OAR-2023-0434-0640	Jean Cline
EPA-HQ-OAR-2023-0434-0641	Jeffrey Smith
EPA-HQ-OAR-2023-0434-0642	Karin Hemmingsen
EPA-HQ-OAR-2023-0434-0643	Andrea Kepcha
EPA-HQ-OAR-2023-0434-0644	Joanne Logan
EPA-HQ-OAR-2023-0434-0645	Lucas Sabalka
EPA-HQ-OAR-2023-0434-0646	Michael DiMonte
EPA-HQ-OAR-2023-0434-0647	Moni Usasz
EPA-HQ-OAR-2023-0434-0648	Jewish Earth Alliance
EPA-HQ-OAR-2023-0434-0649	HealthLink
EPA-HQ-OAR-2023-0434-0650	Patricia Irish
EPA-HQ-OAR-2023-0434-0651	Laura Haider
EPA-HQ-OAR-2023-0434-0652	Alexa Ross
EPA-HQ-OAR-2023-0434-0653	Kathryn Smith
EPA-HQ-OAR-2023-0434-0654	james jackson
EPA-HQ-OAR-2023-0434-0655	Anonymous public comment
EPA-HQ-OAR-2023-0434-0656	Anonymous public comment
EPA-HQ-OAR-2023-0434-0657	Anonymous public comment
EPA-HQ-OAR-2023-0434-0658	Audree Hsu
EPA-HQ-OAR-2023-0434-0659	Fletcher Sturm
EPA-HQ-OAR-2023-0434-0660	Rebecca Seth
EPA-HQ-OAR-2023-0434-0661	Trestin Johnson
EPA-HQ-OAR-2023-0434-0662	Louise and Mike Lipsey
EPA-HQ-OAR-2023-0434-0663	Barrie Marchant
EPA-HQ-OAR-2023-0434-0664	Edward Main
EPA-HQ-OAR-2023-0434-0665	Anne Burleigh
EPA-HQ-OAR-2023-0434-0666	Cory Pinckard
EPA-HQ-OAR-2023-0434-0667	William Lucey
EPA-HQ-OAR-2023-0434-0668	Jill Silvia
EPA-HQ-OAR-2023-0434-0669	Mark Hillenbrand
EPA-HQ-OAR-2023-0434-0670	Nancy Hauer
EPA-HQ-OAR-2023-0434-0671	Victor Colon
EPA-HQ-OAR-2023-0434-0672	Sandra Sobanski
EPA-HQ-OAR-2023-0434-0673	Rhonda Buttacavoli
EPA-HQ-OAR-2023-0434-0674	K. Rowles
EPA-HQ-OAR-2023-0434-0675	Patricia Kullberg
EPA-HQ-OAR-2023-0434-0676	Kristin Jaros
EPA-HQ-OAR-2023-0434-0677	Ina Asher

Document Control Number	Commenter
EPA-HQ-OAR-2023-0434-0678	Jennifer Barton
EPA-HQ-OAR-2023-0434-0679	Ann Turner
EPA-HQ-OAR-2023-0434-0680	Tracy Leed
EPA-HQ-OAR-2023-0434-0681	Linda and Joe Roe
EPA-HQ-OAR-2023-0434-0682	Meridian Energy
EPA-HQ-OAR-2023-0434-0683	Wendy Cohen
EPA-HQ-OAR-2023-0434-0684	Mach4 Energy
EPA-HQ-OAR-2023-0434-0685	Sharon Baker
EPA-HQ-OAR-2023-0434-0686	Jeffrey Blackman
EPA-HQ-OAR-2023-0434-0687	Sharon Baker
EPA-HQ-OAR-2023-0434-0688	Jason Brock
EPA-HQ-OAR-2023-0434-0689	Ruchir Vora
EPA-HQ-OAR-2023-0434-0690	NuEnergy, LLC
EPA-HQ-OAR-2023-0434-0691	Southwestern Oil Company
EPA-HQ-OAR-2023-0434-0692	Rock Oil Company
EPA-HQ-OAR-2023-0434-0693	Elizabeth Deerfield
EPA-HQ-OAR-2023-0434-0694	Gillian Healed
EPA-HQ-OAR-2023-0434-0695	Helena Black
EPA-HQ-OAR-2023-0434-0696	Regina Packard
EPA-HQ-OAR-2023-0434-0697	Francene Shed
EPA-HQ-OAR-2023-0434-0698	Anonymous public comment
EPA-HQ-OAR-2023-0434-0699	Edward Main
EPA-HQ-OAR-2023-0434-0700	Orlando Schwartz
EPA-HQ-OAR-2023-0434-0701	John Ulloth
EPA-HQ-OAR-2023-0434-0702	Ashlynn Moore
EPA-HQ-OAR-2023-0434-0703	Elaine Fultz
EPA-HQ-OAR-2023-0434-0704	Loretta Jeffreys
EPA-HQ-OAR-2023-0434-0705	Anonymous public comment
EPA-HQ-OAR-2023-0434-0706	Ron Munson
EPA-HQ-OAR-2023-0434-0707	Alfred Jonas
EPA-HQ-OAR-2023-0434-0708	Eva Lydick
EPA-HQ-OAR-2023-0434-0709	Vicki Gorman
EPA-HQ-OAR-2023-0434-0710	Kathryn Lindsay
EPA-HQ-OAR-2023-0434-0711	Sandra Lambert
EPA-HQ-OAR-2023-0434-0712	Andy Sitterer
EPA-HQ-OAR-2023-0434-0713	Therese Buss
EPA-HQ-OAR-2023-0434-0714	Martha Cottle
EPA-HQ-OAR-2023-0434-0715	Toni Evans
EPA-HQ-OAR-2023-0434-0716	Eric Thompson

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EPA-HQ-OAR-2023-0434-0717	Ronald Martin
EPA-HQ-OAR-2023-0434-0718	Jennifer Pick
EPA-HQ-OAR-2023-0434-0719	Ashley Sampson
EPA-HQ-OAR-2023-0434-0720	Meryl Klein
EPA-HQ-OAR-2023-0434-0721	Niles Busler
EPA-HQ-OAR-2023-0434-0722	William Gawne Jr.
EPA-HQ-OAR-2023-0434-0723	Alice Freund
EPA-HQ-OAR-2023-0434-0724	Kristen Kalbrener
EPA-HQ-OAR-2023-0434-0725	Diane McCutcheon
EPA-HQ-OAR-2023-0434-0726	James Fallaw
EPA-HQ-OAR-2023-0434-0727	Jim Tjepkema
EPA-HQ-OAR-2023-0434-0728	Jacqueline and Jay Malonson
EPA-HQ-OAR-2023-0434-0729	Nancy Galland
EPA-HQ-OAR-2023-0434-0730	Michael Rueli
EPA-HQ-OAR-2023-0434-0731	James Reefe
EPA-HQ-OAR-2023-0434-0732	Arlene S Ash
EPA-HQ-OAR-2023-0434-0733	Ann Ercelawn
EPA-HQ-OAR-2023-0434-0734	Virginia Tarango
EPA-HQ-OAR-2023-0434-0735	Kurt Gubrud
EPA-HQ-OAR-2023-0434-0736	Linda Aston
EPA-HQ-OAR-2023-0434-0737	Donna Maddox
EPA-HQ-OAR-2023-0434-0738	Amber Locke
EPA-HQ-OAR-2023-0434-0739	Louise Pillai
EPA-HQ-OAR-2023-0434-0740	Christine Barsy-Eckman
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EPA-HQ-OAR-2023-0434-0744	Colleen Coyne
EPA-HQ-OAR-2023-0434-0745	William Gawne
EPA-HQ-OAR-2023-0434-0746	Owen Senger
EPA-HQ-OAR-2023-0434-0747	Bill Mattingly
EPA-HQ-OAR-2023-0434-0748	Sandra Seberger
EPA-HQ-OAR-2023-0434-0749	Luzia Soares
EPA-HQ-OAR-2023-0434-0750	Brent Jenkins
EPA-HQ-OAR-2023-0434-0751	Deidra Smith
EPA-HQ-OAR-2023-0434-0752	Janning Kennedy
EPA-HQ-OAR-2023-0434-0753	Rachel Hobbs
EPA-HQ-OAR-2023-0434-0754	Ann Butler
EPA-HQ-OAR-2023-0434-0755	Bonnie Penn

Document Control Number	Commenter
EPA-HQ-OAR-2023-0434-0756	James Pridgen
EPA-HQ-OAR-2023-0434-0757	Robert Vertrees
EPA-HQ-OAR-2023-0434-0758	Madeline Burns
EPA-HQ-OAR-2023-0434-0759	Richard Birch
EPA-HQ-OAR-2023-0434-0760	Greg Spahn
EPA-HQ-OAR-2023-0434-0761	Kathleen Gessaman
EPA-HQ-OAR-2023-0434-0762	James Pitre
EPA-HQ-OAR-2023-0434-0763	Paul Huddy
EPA-HQ-OAR-2023-0434-0764	Tim Noworyta
EPA-HQ-OAR-2023-0434-0765	Charlene Barton
EPA-HQ-OAR-2023-0434-0766	Elaine Sacco
EPA-HQ-OAR-2023-0434-0767	Sue Swanson
EPA-HQ-OAR-2023-0434-0768	Thomas Pogge
EPA-HQ-OAR-2023-0434-0769	Ivy Mathieu
EPA-HQ-OAR-2023-0434-0770	Brian Gugerty
EPA-HQ-OAR-2023-0434-0771	Kate Ellison
EPA-HQ-OAR-2023-0434-0772	Chelsea Gahran
EPA-HQ-OAR-2023-0434-0773	Mary Ricketts
EPA-HQ-OAR-2023-0434-0774	Ann Harris
EPA-HQ-OAR-2023-0434-0775	Callie Willis
EPA-HQ-OAR-2023-0434-0776	Julie Sizelove
EPA-HQ-OAR-2023-0434-0777	Margaret Flaherty
EPA-HQ-OAR-2023-0434-0778	Allison Sokol
EPA-HQ-OAR-2023-0434-0779	Debra Dunson
EPA-HQ-OAR-2023-0434-0780	Theodore Chase Jr.
EPA-HQ-OAR-2023-0434-0781	Brian Barlow
EPA-HQ-OAR-2023-0434-0782	Robert Sadler
EPA-HQ-OAR-2023-0434-0783	Vianey Nunez
EPA-HQ-OAR-2023-0434-0784	Addie Klimek
EPA-HQ-OAR-2023-0434-0785	Jen Fish
EPA-HQ-OAR-2023-0434-0786	Margaret Tingley
EPA-HQ-OAR-2023-0434-0787	Kristina de Korsak
EPA-HQ-OAR-2023-0434-0788	Karen Roth
EPA-HQ-OAR-2023-0434-0789	Alton Campbell
EPA-HQ-OAR-2023-0434-0790	Teresa Roberts
EPA-HQ-OAR-2023-0434-0791	Dash Longe
EPA-HQ-OAR-2023-0434-0792	John Kersting
EPA-HQ-OAR-2023-0434-0793	Lawrence Austin
EPA-HQ-OAR-2023-0434-0794	Cathleen Rose

Document Control Number	Commenter
EPA-HQ-OAR-2023-0434-0795	Barry Cohen
EPA-HQ-OAR-2023-0434-0796	Cindy Winters
EPA-HQ-OAR-2023-0434-0797	Patricia Freiberg
EPA-HQ-OAR-2023-0434-0798	Nonie Woolf
EPA-HQ-OAR-2023-0434-0799	Jeffrey Holder
EPA-HQ-OAR-2023-0434-0800	Theresa Tonnesen-O'Brien
EPA-HQ-OAR-2023-0434-0801	John Onderdonk
EPA-HQ-OAR-2023-0434-0802	Supun Edirisinghe
EPA-HQ-OAR-2023-0434-0803	Mike Ellison
EPA-HQ-OAR-2023-0434-0804	Brianna Pitts
EPA-HQ-OAR-2023-0434-0805	Jill Sheldrake
EPA-HQ-OAR-2023-0434-0806	Ann and Timothy Wheeler
EPA-HQ-OAR-2023-0434-0807	Lavena Johanson
EPA-HQ-OAR-2023-0434-0808	Richard O'Connor
EPA-HQ-OAR-2023-0434-0809	Andrea Witkowski
EPA-HQ-OAR-2023-0434-0810	Jay McCahill
EPA-HQ-OAR-2023-0434-0811	Anonymous public comment
EPA-HQ-OAR-2023-0434-0812	Anonymous public comment
EPA-HQ-OAR-2023-0434-0813	Molly Hauck
EPA-HQ-OAR-2023-0434-0814	Katherine Martin
EPA-HQ-OAR-2023-0434-0815	Patti Clancy
EPA-HQ-OAR-2023-0434-0816	Rabbi Devorah Lynn
EPA-HQ-OAR-2023-0434-0817	Nancy Bouldin
EPA-HQ-OAR-2023-0434-0818	Rabbi Suzanne Singer
EPA-HQ-OAR-2023-0434-0819	Kat Smith
EPA-HQ-OAR-2023-0434-0820	Sharon Mendelson
EPA-HQ-OAR-2023-0434-0821	Sarah C (No surname provided)
EPA-HQ-OAR-2023-0434-0822	G. Paul Richter
EPA-HQ-OAR-2023-0434-0823	Jeffrey Stanton
EPA-HQ-OAR-2023-0434-0824	Gregory Barlow
EPA-HQ-OAR-2023-0434-0825	Anabel Shafia
EPA-HQ-OAR-2023-0434-0826	Ethan Frank
EPA-HQ-OAR-2023-0434-0827	Tania Malven
EPA-HQ-OAR-2023-0434-0828	Joyce Wasserman
EPA-HQ-OAR-2023-0434-0829	Bret Andrews
EPA-HQ-OAR-2023-0434-0830	David Bezanson
EPA-HQ-OAR-2023-0434-0831	Anonymous public comment
EPA-HQ-OAR-2023-0434-0832	Connie Fleeger
EPA-HQ-OAR-2023-0434-0833	Muhammad Omer

Document Control Number	Commenter
EPA-HQ-OAR-2023-0434-0834	Kazi Tejwar
EPA-HQ-OAR-2023-0434-0835	Jon Skoyen
EPA-HQ-OAR-2023-0434-0836	Diane Langejans
EPA-HQ-OAR-2023-0434-0837	Jane Mansfield
EPA-HQ-OAR-2023-0434-0838	Richard Spotts
EPA-HQ-OAR-2023-0434-0839	Susybelle Gosslee
EPA-HQ-OAR-2023-0434-0840	Riverside Energy Michigan, LLC
EPA-HQ-OAR-2023-0434-0841	David Gibson
EPA-HQ-OAR-2023-0434-0842	Jane Perkins
EPA-HQ-OAR-2023-0434-0843	Coleen Anderson
EPA-HQ-OAR-2023-0434-0844	Jacqueline Jenkins
EPA-HQ-OAR-2023-0434-0845	Steven Urkowitz
EPA-HQ-OAR-2023-0434-0846	Richard Spotts
EPA-HQ-OAR-2023-0434-0847	Desiree Rammon
EPA-HQ-OAR-2023-0434-0848	Janice Habermehl
EPA-HQ-OAR-2023-0434-0849	Alexa Manning
EPA-HQ-OAR-2023-0434-0850	Ellie Mercer
EPA-HQ-OAR-2023-0434-0851	Oliver Kelly
EPA-HQ-OAR-2023-0434-0852	Vivienne Lenk
EPA-HQ-OAR-2023-0434-0853	Betty Reefer
EPA-HQ-OAR-2023-0434-0854	Fran Hickey
EPA-HQ-OAR-2023-0434-0855	Faith Franck
EPA-HQ-OAR-2023-0434-0856	Pat Schmieder
EPA-HQ-OAR-2023-0434-0857	James Engler
EPA-HQ-OAR-2023-0434-0858	Leslie P
EPA-HQ-OAR-2023-0434-0859	Mary Lidstrom
EPA-HQ-OAR-2023-0434-0860	Janet Smarr
EPA-HQ-OAR-2023-0434-0861	John and Jean Fleming
EPA-HQ-OAR-2023-0434-0862	David Kronheim
EPA-HQ-OAR-2023-0434-0863	Beverly Woodrome
EPA-HQ-OAR-2023-0434-0864	Raquel Duarte
EPA-HQ-OAR-2023-0434-0865	Darlene Wallace
EPA-HQ-OAR-2023-0434-0866	Bridger Photonics
EPA-HQ-OAR-2023-0434-0867	Jan Johnston
EPA-HQ-OAR-2023-0434-0868	Julia Heath
EPA-HQ-OAR-2023-0434-0869	Interfaith Power & Light
EPA-HQ-OAR-2023-0434-0870	Hannah Streaty
EPA-HQ-OAR-2023-0434-0871	Claudia Crane
EPA-HQ-OAR-2023-0434-0872	Judee Reel

Document Control Number	Commenter
EPA-HQ-OAR-2023-0434-0873	Jim Steitz
EPA-HQ-OAR-2023-0434-0874	Susan Rodriguez
EPA-HQ-OAR-2023-0434-0875	John Hunter
EPA-HQ-OAR-2023-0434-0876	Pam Novotny
EPA-HQ-OAR-2023-0434-0877	Rona Fried
EPA-HQ-OAR-2023-0434-0878	Heena Gefers
EPA-HQ-OAR-2023-0434-0879	Louis Goldstein
EPA-HQ-OAR-2023-0434-0880	Jim Steitz
EPA-HQ-OAR-2023-0434-0881	Pam Ford
EPA-HQ-OAR-2023-0434-0882	Diane Ensign
EPA-HQ-OAR-2023-0434-0883	Diane Ensign
EPA-HQ-OAR-2023-0434-0884	David Schroeder
EPA-HQ-OAR-2023-0434-0885	Phyllis Chu
EPA-HQ-OAR-2023-0434-0886	John Laytham
EPA-HQ-OAR-2023-0434-0887	Michael Byers
EPA-HQ-OAR-2023-0434-0888	Kathy Lamb
EPA-HQ-OAR-2023-0434-0889	Joe Schiller
EPA-HQ-OAR-2023-0434-0890	Judy Lukasiewicz
EPA-HQ-OAR-2023-0434-0891	Katherine Plosky
EPA-HQ-OAR-2023-0434-0892	Lissa Ray
EPA-HQ-OAR-2023-0434-0893	Lucile Wright
EPA-HQ-OAR-2023-0434-0894	Michael MacPherson
EPA-HQ-OAR-2023-0434-0895	Emily Sims
EPA-HQ-OAR-2023-0434-0896	Rebecca Novick
EPA-HQ-OAR-2023-0434-0897	Anonymous comment
EPA-HQ-OAR-2023-0434-0898	Pamela Holley-Wilcox
EPA-HQ-OAR-2023-0434-0899	Charlotte Graham-Clark
EPA-HQ-OAR-2023-0434-0900	Linda Thompson
EPA-HQ-OAR-2023-0434-0901	Dr. Leo and Pat Holland
EPA-HQ-OAR-2023-0434-0902	Matthew Smith
EPA-HQ-OAR-2023-0434-0903	Project Canary
EPA-HQ-OAR-2023-0434-0904	Differentiated Gas Coordinating Council
EPA-HQ-OAR-2023-0434-0905	American Petroleum Institute (API)
EPA-HQ-OAR-2023-0434-0906	American Gas Association (AGA) and American Public Gas Association (APGA)
EPA-HQ-OAR-2023-0434-0907	Gillian Clark
EPA-HQ-OAR-2023-0434-0908	Anonymous comment
EPA-HQ-OAR-2023-0434-0909	Evan Elias
EPA-HQ-OAR-2023-0434-0910	Lisa Sullivan

Document Control Number	Commenter
EPA-HQ-OAR-2023-0434-0911	Valeire Gentieu
EPA-HQ-OAR-2023-0434-0912	Tali Mendelberg
EPA-HQ-OAR-2023-0434-0913	Linda Pollock
EPA-HQ-OAR-2023-0434-0914	Kathleen Bizzarro
EPA-HQ-OAR-2023-0434-0915	Rickie Jones
EPA-HQ-OAR-2023-0434-0916	Rev. Karen Van Fossan
EPA-HQ-OAR-2023-0434-0917	Eileen Sheehan
EPA-HQ-OAR-2023-0434-0918	Brian Fikes
EPA-HQ-OAR-2023-0434-0919	Bonnie Monte
EPA-HQ-OAR-2023-0434-0920	H. L. Chris Chrissos
EPA-HQ-OAR-2023-0434-0921	Sandra Cole
EPA-HQ-OAR-2023-0434-0922	Grace Silva
EPA-HQ-OAR-2023-0434-0923	Frederick Klein
EPA-HQ-OAR-2023-0434-0924	Bruce Krawisz
EPA-HQ-OAR-2023-0434-0925	Lawrence Rosin
EPA-HQ-OAR-2023-0434-0926	Anonymous comment
EPA-HQ-OAR-2023-0434-0927	Vicky Junot
EPA-HQ-OAR-2023-0434-0928	Heather Sisto
EPA-HQ-OAR-2023-0434-0929	Lissa Ray
EPA-HQ-OAR-2023-0434-0930	Lyla Yango
EPA-HQ-OAR-2023-0434-0931	Teri Fields
EPA-HQ-OAR-2023-0434-0932	Leland Cheskis
EPA-HQ-OAR-2023-0434-0933	Benjamin Doss
EPA-HQ-OAR-2023-0434-0934	Glen Anderson
EPA-HQ-OAR-2023-0434-0935	Anonymous comment
EPA-HQ-OAR-2023-0434-0936	Public Hearing
EPA-HQ-OAR-2023-0434-0938	MESA[j]

[a] The comments by (API) were also supported by Missaukee Oil and Gas Company LLC (Docket ID No. EPA-HQ-OAR-2023-0434-0207), Altavista Energy, Inc. (Docket ID No. EPA-HQ-OAR-2023-0434-0209), Michigan Oil & Gas Association (MOGA) (Docket ID No. EPA-HQ-OAR-2023-0434-0213), ConocoPhillips (Docket ID No. EPA-HQ-OAR-2023-0434-0272), EKOGA (Docket ID No. EPA-HQ-OAR-2023-0434-0226), OOGA (Docket ID No. EPA-HQ-OAR-2023-0434-0224), Phillip Koro (Docket ID No. EPA-HQ-OAR-2023-0434-0195), Riverside Energy Michigan, LLC (Docket ID No. EPA-HQ-OAR-2023-0434-0840), Rock Oil Company (Docket ID No. EPA-HQ-OAR-2023-0434-0692), Southwestern Oil Company (Docket ID No. EPA-HQ-OAR-2023-0434-0691), Miller Energy Company, LLC (Docket ID No. EPA-HQ-OAR-2023-0434-0288), AIPRO (Docket ID No. EPA-HQ-OAR-2023-0434-0240), and Marathon Oil Company (Docket ID No. EPA-HQ-OAR-2023-0434-0230).

[b] The comments by IPAA were also supported by Missaukee Oil and Gas Company LLC (Docket ID No. EPA-HQ-OAR-2023-0434-0207), Altavista Energy, Inc. (Docket ID No. EPA-HQ-OAR-2023-0434-0209), MOGA (Docket ID No. EPA-HQ-OAR-2023-0434-0213), EKOGA (Docket ID No. EPA-HQ-OAR-2023-0434-0226), OOGA (Docket ID No. EPA-HQ-OAR-2023-0434-0224), Phillip Koro (Docket ID No. EPA-HQ-OAR-2023-0434-0195), Riverside Energy Michigan, LLC (Docket ID No. EPA-HQ-OAR-2023-0434-0840), Rock Oil Company (Docket ID No. EPA-HQ-OAR-2023-0434-0692), Southwestern Oil Company (Docket ID No. EPA-HQ-OAR-2023-0434-0691), Texas Alliance of Energy Producers (Docket ID No. EPA-HQ-OAR-2023-0434-0297), Miller Energy Company, LLC (Docket ID No. EPA-HQ-OAR-2023-0434-0288), and AIPRO (Docket ID No. EPA-HQ-OAR-2023-0434-0240).

[c] The comments by AXPC were also supported by Diamondback Energy, Inc. (Docket ID No. EPA-HQ-OAR-2023-0434-0208), and Marathon Oil Company (Docket ID No. EPA-HQ-OAR-2023-0434-0230), and OOGA (Docket ID No. EPA-HQ-OAR-2023-0434-0224).

[d] The comments by KIOGA were also supported by Altavista Energy, Inc. (Docket ID No. EPA-HQ-OAR-2023-0434-0209), and EKOGA (Docket ID No. EPA-HQ-OAR-2023-0434-0226).

[e] The comments by Michigan Oil & Gas Association (MOGA) were also supported by Missaukee Oil and Gas Company LLC (Docket ID No. EPA-HQ-OAR-2023-0434-0207), Phillip Koro (Docket ID No. EPA-HQ-OAR-2023-0434-0195), Riverside Energy Michigan, LLC (Docket ID No. EPA-HQ-OAR-2023-0434-0840), Rock Oil Company (Docket ID No. EPA-HQ-OAR-2023-0434-0692), and Southwestern Oil Company (Docket ID No. EPA-HQ-OAR-2023-0434-0691).

[f] The comments by EKOGA were also supported by Altavista Energy, Inc. (Docket ID No. EPA-HQ-OAR-2023-0434-0209).

[g] The comments by (MSC) were also supported by OOGA (Docket ID No. EPA-HQ-OAR-2023-0434-0224).

[h] The comments by American Free Enterprise Chamber of Commerce, Center for Legal Action and Michigan Oil and Gas Association were also supported by Missaukee Oil and Gas Company LLC (Docket ID No. EPA-HQ-OAR-2023-0434-0207), and MOGA (Docket ID No. EPA-HQ-OAR-2023-0434-0213), Phillip Koro (Docket ID No. EPA-HQ-OAR-2023-0434-0195), Riverside Energy Michigan, LLC (Docket ID No. EPA-HQ-OAR-2023-0434-0840), Rock Oil Company (Docket ID No. EPA-HQ-OAR-2023-0434-0692), Southwestern Oil Company (Docket ID No. EPA-HQ-OAR-2023-0434-0691), and Miller Energy Company, LLC (Docket ID No. EPA-HQ-OAR-2023-0434-0288).

[i] The comments submitted by Climate Protection & Restoration Initiative were resubmitted on March 27, 2024, because the commenter uploaded an incorrect version of their comments to the docket. The EPA accepted the March 27, 2024, version with the Docket ID No. EPA-HQ-OAR-2023-0434-0937.

[j] The comments submitted by Mormon Environmental Stewardship Alliance (MESA) were submitted on March 26, 2024, one day after the close of the comment period. The EPA accepted the submittal.

The following commenters provided comment to the August 1, 2023 Notice of Proposed Rulemaking for the Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems (88 FR 50282, hereafter referred to as the Subpart W Proposed Rule) regarding proposed amendments to 40 CFR part 98, subpart A. These comments were reviewed and have responses included related to the updates finalized under this rulemaking.

Document Control Number	**Commenter**
EPA-HQ-OAR-2023-0234-0299	GPA Midstream Association
EPA-HQ-OAR-2023-0234-0381	Endeavor Energy Resources, L.P.
EPA-HQ-OAR-2023-0234-0382	Arkansas Independent Producers and Royalty Owners (AIPRO)
EPA-HQ-OAR-2023-0234-0394	Williams Companies, Inc.
EPA-HQ-OAR-2023-0234-0398	The Petroleum Alliance of Oklahoma
EPA-HQ-OAR-2023-0234-0402	American Petroleum Institute et al.

1 Definitions

Comment 1: Commenters (0276, 0298) stated that the EPA should apply the same terms and definitions between this proposed rule and 40 CFR part 98 subpart W. Commenter 0276 asserted that the EPA proposed to define some terms differently from subpart W and should instead reference the definitions in subpart W. Commenter 0298 stated that the EPA should apply the same terms and use consistent requirements wherever possible between the two regulatory programs.

Response 1: The EPA agrees that where possible and reasonable, terms should be consistent between programs. Accordingly, to the extent possible and as appropriate, the EPA has aligned definitions and requirements between the WEC program and subpart W of the GHGRP. Specific comments contending that the EPA failed to do so in the proposed rule are addressed in section 1.3 of this document.

Comment 2: Commenter 0212 stated the Inflation Reduction Act (IRA) Methane Emissions Reduction Program (MERP) does not contain legislative history and lacks definitions for certain terms, and as such, the EPA must interpret the legislative text. The commenter asserted that the EPA engaged in a manipulated, partial reading of the text and ignored key terms and as a result reach inappropriate conclusions and regulatory proposals.

Response 2: The EPA disagrees with the commenter's assertion that the proposed rule reflects a manipulated reading of the Inflation Reduction Act. To the extent that the commenter identified specific conclusions they disagreed with, those comments are addressed in section 1.1 of this document. In some cases, after consideration of comments and further review of the statutory text, the EPA is finalizing a different approach than proposed.

Comment 3: Commenter 0327 stated that the proposed definitions are necessary to implement CAA section 136 and do so in a workable and effective way that is in accordance with the statutory language and creates regulatory harmony.

Response 3: The EPA acknowledges the commenters' support for the proposed definitions. The EPA has made revisions to several definitions to align with the 2024 Subpart W Final Rule and create regulatory harmony. The EPA directs the commenter to section II.A. of the preamble to the final rule for full discussion of the final definitions and associated revisions.

1.1 "WEC applicable facility" definition

Comment 1: Commenters (0189, 0196) requested that the EPA state clearly in the final rule that oil and gas producers generating less than 25,000 tons of CO_2e are not required to submit documentation to the regulatory body proving that the emissions threshold was not exceeded. Commenter 0196 requested that the EPA states that smaller oil and gas producers that do not pay WEC are not subject to audit and/or enforcement related to the tax's application.

Response 1: The EPA has finalized the definition of a "WEC applicable facility" with clarifying revisions as discussed at section II.A. of the preamble to the final rule. A facility that accurately reports 25,000 metric tons CO_2e or less under subpart W would not be considered a "WEC applicable facility." The EPA disagrees with the commenter that smaller oil and gas producers should not be subject to audit and/or enforcement actions. In regard to audit and enforcement, the reported information under subpart W will be used to conduct verification as discussed in section III.A.4. of the preamble to the final rule as well as any auditing that occurs as discussed in section III.E.1. of the preamble to the final rule.

Comment 2: Commenters (0185, 0189, 0196, 0197, 0209, 0212, 0215, 0216, 0222, 0226, 0235, 0237, 0239, 0240, 0240, 0288, 0289, 0291, 0297, 0298, 0300, 0905) disagreed with the proposed definitions of "applicable facility" and "WEC applicable facility."

Commenter 0185 questioned why the EPA has modified the definition of a facility to include an entire basin when that has not been the case in the past.

Commenters (0189, 0235) recommended a definition of facility that is no larger than the area described in each oil and/or gas lease that is recorded at each courthouse. Commenters (0196, 0197, 0209, 0212, 0222, 0226, 0240, 0297) recommended a definition based upon a well pad, or compressor site, or even a field. Commenters (0196, 0209, 0222, 0226) stated that this would result in the exemption opportunities making more sense. Commenters (0240, 0288, 0297, 0300) stated that the proposed facility definition is inconsistent with the realities of oil and natural gas production operations and advocated for a definition based upon a well pad which the commenters stated resembles a facility under the definition in the CAA and is the typical permitting unit under CAA regulations. Commenter 0237 advocated for a similar definition of facility and stated that the definition in the proposed rule would result in their operations having three facilities that cover 10,150 wells in two states. Commenter 0288 stated that all of their more than 600 wells are located within a single basin.

Commenter 0240 contrasted the basin approach for the Onshore Production and Onshore Gathering & Boosting industry segments with that for Offshore Production. The commenter stated that the EPA estimated that approximately 50 out of the greater than 1,500 offshore facilities would be over the 25,000 mt CO_2e threshold and be subject to WEC. The commenter asserted that if a similar definition were provided for Onshore Production and Onshore Gathering & Boosting industry segments it is highly likely that a similar low percentage of onshore facilities would meet the reporting threshold and be subject to the WEC. Commenters (0212, 0240) stated that approximately 85 percent of oil wells and 74 percent of natural gas wells are marginal wells producing less than 15 barrels/day (b/d) of oil and 90 million cubic feet/day (mcf/d) of natural gas, respectively, that most of these operations are owned by small businesses, and that none of them would exceed the reporting threshold individually.

Commenters (0209, 0222, 0226) stated that the proposed definitions needlessly threaten small producers and stated that the industry standard definition of a facility is an independently operated lease, not everything in the entire basin. The commenters stated that basins can be vast,

with many leases, and basins can stretch across state lines which will complicate regulatory efforts.

Commenters (0197, 0212, 0237, 0905) stated that the EPA has failed to address the inappropriate use of the GHGRP subpart W facility definition in the proposed rule and noted that the EPA had previously stated that, "These definitions are intended only for purposes of subpart W and are not intended to affect the definition of a facility as it might be applied in any other context of the Clean Air Act."

Commenter 0215 suggested that the definition of a facility for purposes of WEC be considered on a well-by well or location-by-location basis as in the existing language at 40 CFR 98.230(a)(2). The commenter stated that netting of the entire basin as one facility unfairly burdens those who are effectively managing their CO_2 emissions versus those who are not and creates a free rider premium, thus encouraging those who are effectively managing to be less effective in the future. The commenter stated that this free rider may well work at odds to the intention of the proposed rule.

Commenters (0289, 0291) recommended that the facility definitions align with those established in New Source Performance Standards (NSPS) and Emission Guidelines (EG) OOOO, OOOOa, OOOOb, and OOOOc. Commenter 0291 stated this would ensure clarity and reduce regulatory complexities for industry stakeholders.

Commenter 0239 noted that in contrast to subpart W, the term "hydrocarbon basin" is not mentioned in the proposed rule and there is only minor mention of "basin." The commenter stated that this implies that the facilities are assessed on an individual, rather than hydrocarbon basin-wide basis. The commenter recommended that the EPA adjust the final rulemaking so that the definitions for owners and facilities are consistent with subpart W. The commenter further stated that if the EPA is adopting an alternative reading of the CAA text that only individual facilities within the industry segments, as defined in subpart W, with more than 25,000 mt of CO_2e of GHGs emitted per year, then the EPA should similarly clarify this in the final rule so that owners and operators know that the EPA is not using the “basin-wide” approach to defining an applicable facility. The commenter stated that this is a permissible, and arguably the only proper, reading of the statute.

Commenters (0237, 0905) asserted that the proposed approach of relying upon the subpart W reporting requirements for defining the geographic bounds of an “applicable facility” is flawed and that the EPA’s proposed approach is procedurally inadequate because the EPA does not provide any meaningful legal, policy, or factual analysis of the statutory term “applicable facility” as it relates to defining the geographic bounds of such facilities and no explanation as to how the approach for reporting facility level emissions under subpart W satisfies the meaning of “applicable facility” under CAA section 136. Commenters (0216, 0240, 0297) asserted that the proposed rule's interpretation of facility is unreasonable and inconsistent with CAA section 136. Commenters (0216, 0237, 0905) stated that nothing in CAA section 136 requires "facility" to be

defined on a basin-wide basis or otherwise adopt the same definitions as used in subpart W of part 98.

Commenters (0216, 0237, 0298, 0905) noted that the statute directs that "[f]or purposes of this section, the term 'applicable facility' means a facility within the following industry segments, as defined in subpart W of part 98 of title 40, Code of Federal Regulations." CAA section 136(d) and asserted that the phrase "as defined in subpart W" immediately follows the term "industry segments" and thus refers to "industry segments" instead of the term "applicable facility." Commenter 0298 asserted that this does not refer to the industry segment specific definitions in subpart W for onshore production and gathering and boosting.

Commenters (0237, 0905) stated that CAA section 136 leaves open the question of what the geographic bounds of a facility are under the WEC program. The commenters noted that the unique characteristics of the oil and gas production industry have been handled in various ways under relevant CAA programs. The commenters noted that Congress specified under the CAA section 112 air toxics program that "emissions from any oil or gas exploration or production well (with associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this section." The commenters stated that Congress recognized the potential confusion that might arise as to how oil and gas production operations should be grouped for purposes of identifying and administering the CAA section 112 air toxics program and gave the EPA detailed instructions for addressing such operations in a discrete, plant-like fashion. The commenters further noted that in the absence of such industry-specific direction from Congress under the CAA Title I preconstruction permitting programs and Title V operating permit program, the EPA promulgated regulations directing that source determinations under those programs should focus on geographically discrete collections of equipment and operations. Under the Title V program, a major source is defined as "any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties …)" and specifying that "[f]or onshore activities belonging to Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment."

The commenters noted that the EPA took a different approach in subpart W of the GHGRP when the EPA concluded that "it was necessary to provide a unique definition of facility for each of these two segments in order to ensure that the reporting delineation is clear, avoid double counting, and ensure appropriate emissions coverage." The commenters observed that the "unique definition of facility" called for aggregation of all operations under common ownership or control within a given hydrocarbon basin. The commenters stated that the EPA issued the

GHGRP primarily under the general information gathering authority of CAA section 114, which in relevant part authorizes the EPA to obtain information from "any person who owns or operates any emissions source," but does not otherwise explain what constitutes a "source" under that section. The commenters asserted that given the lack of any other CAA provision authorizing or governing the GHGRP, the EPA's "facility" definition for the oil and gas sector in subpart W is not necessarily applicable in deciding how "facility" (or functionally similar terms) should be defined under substantive CAA programs – including the WEC rule.

In summary, the commenters stated that under the substantive CAA programs (*i.e.*, those that impose emissions limitations or standards), the EPA is required or, for good and compelling reasons, has opted to adopt an approach that focuses on geographically discrete operations rather than aggregating interrelated operations dispersed over a wide geographic area. Conversely, the commenters stated that under the purely informational GHGRP (a program that is not governed by any express CAA provision), the EPA decided for program-specific purposes to aggregate operations at a basin level, with a caution that such an approach was "not intended to affect" how a facility is defined under other CAA programs.

The commenters noted that the geographic bounds of an "applicable facility" are not prescribed in CAA section 136 and asserted that it is not necessarily reasonable to assume or infer that the basin-wide definition of facility that the EPA coined under subpart W solely for purposes of facilitating the collection of GHG emissions information is appropriate under the WEC rule. The commenters stated that the proposed rule does not describe the geographic boundaries of an applicable facility or otherwise acknowledge or discuss the topic. The commenters assert that the EPA seems to assume that the subpart W facility definition will apply under the WEC rule but contend that tacit assumption does not provide the explanation needed to fully understand the Agency's factual, policy, and legal rationale on such a key element of the proposed rule. As a result, the commenters asserted that commenters did not have adequate notice to develop informed comments and that for the same reasons, the EPA has not satisfied its obligation under CAA section 307(d)(3)(C) to explain the "major legal interpretations and policy considerations underlying the proposed rule." The commenters asserted that prior to finalizing the rule, the EPA must provide further clarity as to the proposed bounds of an "applicable facility" and provide an opportunity for public comments on that proposal.

Commenter 0216 stated that the EPA's belief that CAA section 136 requires the agency to impose methane fees on subpart W "applicable facilities" misreads the statute and results in an overly broad interpretation that would have severe negative consequences for North Dakota and for owners and operators of marginal wells. The commenter stated that combining emissions from all of an owner or operator's assets may be reasonable for reporting purposes because it results in a more complete inventory, it does not follow that emissions should be combined in the same manner for purposes of assessing fees. The commenter stated that the 25,000 metric ton threshold established by Congress should be used to protect small operators and marginal wells and that the EPA can accomplish this by defining facilities more reasonably. The commenter contended that the proposed rule would result in more than 2,200 of marginal wells in North

Dakota being subject to methane fees which could result in these marginal wells being shut-in and plugged and abandoned prematurely, resulting in wasted resources. The commenter asserted that prematurely plugging and abandoning these marginal wells would cause economic harm to North Dakota in the form of lost tax revenue and lost jobs. The commenter recommended that for purposes of onshore petroleum and natural gas production, "facility" should instead be defined as a centralized production facility or, if the asset is not tied into a centralized production facility, a single well-pad. The commenter stated that this definition would reduce confusion surrounding reporting in this segment, be more consistent with NSPS OOOOb and EG OOOOc, is consistent with CAA section 136, and would be more consistent with the common understanding of the word "facility." The commenter noted that operators already report data by centralized production facility to state regulators, such as NDIC, so this should help streamline reporting. The commenter stated that using the centralized production facility approach would also ensure owners and operators are treated consistently across basins. As an example, the commenter explained that the Williston Basin lies partially within Canada, that there are North Dakota owners and operators who have assets on both sides of the border, and as result if "facility" were to be defined basin-wide, methane fees would have to be assessed differently for these owners and operators because the assessment of their methane fees could not take into consideration all of their basin-wide assets. This could mean a higher or lower fee - depending on the company's assets - than the owner or operator would have if all of the Williston Basin was within the United States.

Commenter 0216 further noted that the Regulatory Compliance Exemption must be considered on a state-by-state basis and asserted that to properly implement this exemption, it is necessary to identify facilities within each state rather than basin-wide, as basins cross state borders.

Commenter 0216 stated that at a minimum, the EPA should use the data it already receives to allocate onshore petroleum and natural gas production emissions to sub-basins at the county level.

Commenters (0240, 0297, 0300) asserted that the facility definition does not make sense when applied to GHG reporting and that when associated with the WEC the concerns become much greater. The commenters stated that well sites and associated equipment that are separated geographically by significant distances cannot logically be considered as one facility and that a much narrow geographic determination such as a single well site or well pad would make more sense. Commenter 0297 stated that under the proposed definition, small operators could be driven out of business.

Commenters (0212, 0240, 0297, 0300) asserted that the CAA does not support or does not authorize the EPA's broad definition of onshore petroleum and natural gas production facility and stated that the proposed definition is inconsistent with CAA section 112(n)(4)(A) which states, "... in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose..." Commenter 0212 noted that where the EPA is so frequently referring to the plain reading of the language of the Methane

Tax in this proposal, this Congressional directive should bear strongly on the EPA's interpretation as it has done in defining a "major source" under its Federal operating permit requirements.

Commenter 0237 stated that the EPA appears to have made an unstated assumption that it should maximize applicability of the WEC program and maximize the fees paid under the program. For example, the proposed basin-wide applicable facility definition would have the effect of maximizing the number of facilities that exceed 25,000 mt and minimizing the number of facilities that might avoid the program through netting. Also, a basin-wide wide aggregation would severely limit the opportunities to "net" the emissions of lower-emitting facilities with those of higher-emitting facilities, as provided under CAA section 136(f)(4), because basin-wide aggregation would minimize the number of "facilities" potentially subject to the WEC program. For example, a company operating in only one basin would have no opportunity to net because it would have only a single WEC applicable facility.

Commenter 0237 stated that a basin-wide approach would render CAA section 136(f)(1)(B) largely meaningless because it is rarely the case that an operator produces no natural gas for sale across an entire basin.

Commenters (0212, 0300) referenced a June 2023 letter from Senator Joe Manchin to the EPA that stated the following:

- "The statute clearly intends to exempt marginal wells and smaller producers from the fee. The EPA must make it clearly understood that those entities not subject to the current subpart W Greenhouse Gas Reporting Program are not subject to the EPA fees under MERP.
- The EPA should draw reasonable boundaries around the definition of individual "facilities" (such as pad site, compressor site, or reporting field) for emissions intensity calculations so that aggregations of large amounts of disparate wells and gathering lines does not lead to charging a fee on marginal facilities that Congress intended to exempt or on facilities that have minimal actual emissions."

Commenters (0212, 0300) stated that the use of the basin-wide facility definition thwarts both of these mandates with potentially devastating impact on small operators. The commenters stated that small business oil and natural gas producers typically need to operate hundreds of small wells across an American Association of Petroleum Geologists (AAPG) basin to be economic, that it's projected that a small business well producer with operations across an AAPG basis would be subject to the Methane Tax threshold with as few as 220 oil wells or 300 natural gas wells, and that these totals are well within the operations of a typical small producer. The commenters conclude that the basin-wide facility definition therefore violates congressional intent to exclude small businesses and marginal wells from the scope of the WEC.

Commenter 0291 stated that the EPA's reliance on historical categorizations to justify the impacts of its regulations may be flawed, especially given the significant changes proposed in 40 CFR 98, subpart W regarding the definition of onshore gathering and boosting. The commenter

asserted that these modifications could extend the scope of 'WEC Applicable Facilities,' impacting a larger segment of the industry than anticipated and stated that the EPA must reevaluate these impacts in light of the changes to ensure a fair and accurate assessment of the regulatory burden on the industry. The commenter stated that the EPA should draw reasonable boundaries around the definition of individual "facilities" (such as pad site, compressor site, or reporting field) for emissions intensity calculations so that aggregations of large amounts of disparate wells and gathering lines does not lead to charging a fee on marginal facilities that Congress intended to exempt or on facilities that have minimal actual emissions.

Commenter 0237 stated that a basin-wide definition of applicable facility is unreasonable under the WEC program because the basin-wide collection of equipment and operations under the common ownership or control of a single entity objectively cannot be seen as a "facility." The commenter stated that the term "facility" is commonly understood to mean a geographically discrete, plant-like collection of equipment or operations and provided as examples the definitions in Webster's Ninth New Collegiate Dictionary that "facility means something (like a hospital) that is built, installed, or established to serve a particular purpose" and in the Cambridge Dictionary that "facility means a place, especially buildings, where a particular activity happens." The commenter provided an analogy to a health care company that owns or operates three hospitals in different parts of a given metropolitan area and asserted that those three hospitals cannot reasonably be considered a single "facility" as they are indisputably three separate hospitals, notwithstanding the common ownership or control. Similarly, the commenter asserted that wells that do not sit on the same or adjoining pad sites are distinct, individual facilities and that 10,150 wells cannot be 3 facilities under any reasonable definition.

The commenter further stated that it is thus apparent that the definition of "facility" (a.k.a., "stationary source," "major source," "applicable facility") under substantive CAA programs, including the CAA section 112 air toxics program, the Title I permit programs, and the "major source" definition under the Title V operating permit program, should conform to the common understanding of that term. The commenter asserted that if the EPA wants to depart from that approach under the WEC program, it is incumbent on the Agency to explain why.

Response 2: The EPA disagrees with these comments. As a general matter, the EPA disagrees with commenters' argument that the agency has made an unstated assumption that it should maximize WEC payments. This is untrue; the EPA carefully considered many factors in making its determinations in the proposal and the final rule, including statutory directive, administrability, policy interests, and concerns expressed by commenters. Moreover, in this final rulemaking, the EPA is accepting several of commenters' suggestions, including allowing netting at the parent company level, and applying the regulatory compliance exemption on a state-by-state basis.

The EPA acknowledges that various CAA programs may define "facility" in different ways. However, for purposes of the WEC program, CAA section 136(d) provides clear direction in determining the definition of a facility in stating that, "[f]or purposes of this section, the term 'applicable facility' means a facility within the following industry segments, as defined in subpart W of part 98 of title 40, Code of Federal Regulations." The EPA disagrees with

commenters stating that this language is ambiguous or otherwise leaves open for interpretation the meaning of a facility with the context of CAA section 136. The EPA finds that this language unambiguously directs that the term "applicable facility" within the WEC program has the same meaning as the term "facility" within part 98, subpart W of this title, for each corresponding industry segment. The EPA also notes that it did not through this rulemaking reopen the part 98 definition of "facility," and any asserted change(s) to that definition are outside the scope of this action.

The interpretation by some commenters, suggesting that "as defined in subpart W" modifies "industry segments" and not "facility," and therefore that CAA section 136(d) directs that only the subpart W industry segment definitions be utilized for purposes of CAA section 136, requires a partial reading of the paragraph that would render CAA section 136(d) inconsistent with the full context of CAA section 136. Specifically, CAA sections 136(c) and (e)(1) reference data reported by an "applicable facility" to subpart W of the GHGRP. Per CAA section 136(c), the EPA must collect the charge from 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* of part 98 of title 40, Code of Federal Regulations, regardless of the reporting threshold under that subpart." Per CAA section 136(e)(1) the charge is imposed on "the number of metric tons of methane emissions *reported pursuant to subpart W…. for the applicable facility* that exceed the applicable annual waste emissions threshold listed in subsection (f) during the previous reporting period." These directives make sense only if the same definition of a facility is applied for both programs. The EPA rejects the alternative interpretations from commenters that would run contrary to Congressional directive.

Regarding reference by commenters (0237, 0295) to the text of CAA section 112, the EPA notes that the excerpt taken from CAA section 112 air toxics programs states that (emphasis added) "in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose ***under this section***"—that is, CAA section 112. As previously stated in this response to comment section, the definition of "facility" defers between various separate sections of the CAA. In this case, the referenced text from section 112 is separate from section 136 of the CAA.

In response to the suggestion made by Commenter 0215 for the definition of a facility to be considered on a well-by-well or location-by-location basis per the language of 40 CFR 98.230(a)(2), the EPA does not agree with the suggestion, as the citation made by the commenter refers to the definitions of industry segments as established under subpart W, and not the definition of a facility. The EPA refers the commenter to 40 CFR 98.238 for the definitions of a facility with respect to the applicable segment for segments that have unique facility definitions. Specifically, 40 CFR 98.238 defines "facility with respect to onshore petroleum and natural gas production for purposes of reporting under this subpart and for the corresponding subpart A requirements means all petroleum or natural gas equipment on a single well-pad or associated with a single well-pad and CO_2 enhanced oil recovery (EOR) operations that are under common ownership or common control including leased, rented, or contracted activities by an onshore petroleum and natural gas production owner or operator and that are located in a single hydrocarbon basin as defined in 40 CFR 98.238. Where a person or entity owns or operates more

than one well in a basin, then all onshore petroleum and natural gas production equipment associated with all wells that the person or entity owns or operates in the basin would be considered one facility." We also disagree with commenter 0215's suggestion that we proposed netting at the basin level and that netting in such a way unfairly burdens those who are effectively managing their CO_2 emissions versus those who are not and creates a free rider premium. Netting is conducted *between* separate facilities under common ownership or control, not *within* individual WEC applicable facilities with an identifiable WEC obligated party and which report total emissions under subpart W of the GHGRP. As explained above, some facilities are defined at the basin level but are nevertheless one WEC applicable facility. For more information on the finalized approach to netting, see section II.B. of the preamble to the final rule.

The EPA disagrees with commenters' argument that it is necessary to identify facilities for purposes of implementing the regulatory compliance exemption within each state rather than basin-wide with the suggestion to instead allocate onshore petroleum and natural gas production to sub-basins at the county level. The statutory text of section 136(f)(6)(A) states that the regulatory compliance exemption comes into effect after a determination by the Administrator 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*," (emphasis added). The EPA determines that under the best reading of this text, the regulatory compliance exemption is available only when the *entire* WEC applicable facility is in compliance. Further, the definition of WEC applicable facility, as discussed above, corresponds with corresponding facility definitions under part 98, and in the case of basin-wide facilities, under 40 CFR 98.238—and Congress was aware, at the time it promulgated CAA section 136, that some of these facilities crossed state boundaries. Because of this, it follows that WEC applicable facilities defined at a basin-level will have the Regulatory Compliance Exemption available to them only when a WEC applicable facility is "in compliance with methane emission requirements" of both the NSPS OOOOb standards and EG OOOOc-implementing state or Federal plans for all states that the WEC applicable facility resides in – that is, the point in time when all of the CAA section 111(b) and (d) facilities are legally required to comply with the emissions standards therein. The provisions of the WEC final rule and the utilization of subpart W data support the identification of facilities that span multiple states, and the EPA refers the commenter to section II.D.2. of the preamble to the final rule for a discussion of the rationale and the final revisions made to the regulatory compliance exemption.

Regarding the claims that a basin-wide approach to facility creates more reporting complexity and is geographically flawed, the EPA refers to the *Mandatory Greenhouse Gas Reporting Rule Subpart W – Petroleum and Natural Gas: EPA's Response to Public Comments*[2] and the *Economic Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions Under*

[2] U.S. Environmental Protection Agency (EPA), 2010 (November). *Response to Comments Regarding Mandatory Greenhouse Gas Reporting Rule Subpart W – Petroleum and Natural Gas: EPA's Response to Public Comments*. https://www.regulations.gov/document/EPA-HQ-OAR-2009-0923-3608

Subpart W Final Rule[3] for the original 2010 rulemaking, which determined that the defined facilities with respect to each industry segment are an optimal balance of emissions coverage and cost burden. For that rulemaking, the EPA focused on sources within each segment that contributed significantly to the segment emissions based on information available at the time.

In response to the claim that historical categorizations of industry segments are flawed for assessing the WEC, especially in consideration of the changes to the onshore petroleum and natural gas gathering and boosting industry segment in subpart W, the EPA disagrees. The amendments in 2024 Subpart W Final Rule did not and could not extend the scope of applicability for what is considered a WEC applicable facility. Without reopening the part 98 subpart W provisions, the commenter is directed to section III.D of the preamble to the 2024 Subpart W Final Rule for discussion of these amendments.

Regarding comment on the impact of a basin-wide approach for determining the boundary of a facility for certain industry segments operating in the Williston Basin in both the United States and Canada, the EPA notes that the applicability of the GHGRP at 40 CFR 98.2(a) states, in part, "[t]he GHG reporting requirements and related monitoring, recordkeeping, and reporting requirements of this part apply to the owners and operators of any facility that is located in the United States…" and thus, facilities for the purposes of reporting to the GHGRP include only those assets located in the United States. Therefore, there is no need to assess methane fees differently for these facilities, as the commenter asserts.

In response to the commenters that stated that the development of subpart W was for informational purposes and not intended to be used for the authority of CAA programs, the EPA notes that Congress wrote and promulgated CAA section 136 after the definitions of "facility" for each industry segment had been established and utilized under subpart W. Congress was aware of these definitions, and Congress purposely referred to these definitions in writing CAA section 136. Specifically, section 136(c) of the CAA states that, "[t]he 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 mt of CO_2e of GHGs 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." The EPA finds that Congress unambiguously directed that data reported under subpart W be utilized within a program of the CAA. As previously noted, the EPA finds that the best reading of CAA section 136(d) is that the subpart W facility definitions be utilized for the WEC program.

The EPA disagrees with the commenter stating that the EPA modified the definition of a facility to include an entire basin when that has not been the case in the past. The use of the basin-wide definitions for facilities in the onshore production and gathering and boosting industry segments, the same industry segments we are adopting such definitions here for part 99, is long-standing within the context of 40 CFR part 98 subpart W (see 75 FR 74458 (November 30, 2010) for the onshore production industry segment and 80 FR 64262 (October 22, 2015) for the gathering and

[3] U.S. Environmental Protection Agency (EPA), 2010 (April). *Economic Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions Under Subpart W Supplemental Rule (GHG {Greenhouse Gas} Reporting) - Draft Report.* https://www.regulations.gov/document/EPA-HQ-OAR-2009-0923-0020

boosting industry segment). The EPA also notes that the EPA did not and is not reopening the provisions in subpart W and/or the definitions of facility for the subpart W industry segments in part 98 in this rulemaking, and that comments on changes to the provisions in subpart W are outside the scope of this rulemaking.

As discussed in section II.A. of the preamble to the proposal, the EPA addressed those facilities that have operations in more than one industry segment and for which the definition of facility in 40 CFR 98.6 (subpart A) applies by proposing that they would be considered a single applicable facility under WEC. This definition of applicable facility has been finalized as proposed. An applicable facility that has operations in more than one industry segment must evaluate its total GHG emissions to determine whether, as a whole, it is above the 25,000 mt CO_2e threshold as reported under subpart W across all industry segments. For determining the waste emissions threshold for a WEC facility, each industry segment is assessed separately, then summed together to determine the waste emissions threshold for the facility. See response 4 in this section for additional information regarding facilities with operations in more than one industry segment.

The EPA disagrees with the comment that a basin-wide approach would render CAA section 136(f)(1)(B) largely meaningless because it is rarely the case that an operator produces no natural gas for sale across an entire basin. On the contrary, in each of the most recent five reporting years, 20 or more facilities in the onshore production industry segment have reported no gas produced in the calendar year for sales.

The EPA disagrees with the comment that the proposed basin-wide applicable facility definitions for facilities in the onshore production and gathering and boosting industry segments would have the effect of limiting the netting of emissions of lower-emitting and higher-emitting facilities. We note that within a facility, lowering emissions at one site will offset emissions at a higher emitting site, reducing the overall WEC applicable emissions. In a basin-wide approach, all emissions at each site-level would be aggregated for the facility which ensures that each site, both lower-emitting and higher-emitting, has been accounted for in a similar approach to netting. For additional discussion of the finalized netting provisions under this final rule, refer to section II.B. of the preamble to the final rule and section 3 of this response to comment document.

Commenter 0291 misstates the recent subpart W amendments, as the definition of a "facility with respect to onshore petroleum and natural gas gathering and boosting" in 40 CFR 98.238 was not reopened or modified in the rulemaking. The new reporting element of a site type under the 2024 Subpart W Final Rule did not change the applicable industry segment for reporting facilities. The EPA notes that under the final rule, gathering and boosting facilities with zero reported throughput of natural gas sent to sale do not generate WEC applicable emissions, and therefore will not be subject to charge.

For commenters that stated that the proposed definition of "WEC applicable facility" threatens small producers, the EPA notes that the 25,000 metric ton CO_2e applicability threshold established under CAA section 136(c) serves to limit the impact of the WEC program on smaller operations and refers the commenters to section VI.C. of the preamble to the final rule for the analysis completed under the Regulatory Flexibility Act (RFA).

For all the reasons described in this response, the EPA does not concur with the requests made by commenters to modify the definitions of a facility for the industry segments that are defined at the basin-level. As such, the EPA is finalizing the definition of "applicable facility" and "WEC applicable facility" as discussed in section II.A. of the preamble to the final rule.

Comment 3: Commenters (0294, 0327) expressed support for the definition of "WEC applicable facility" as proposed. Commenter 0294 expressed agreement with the EPA's interpretation of the statute that an applicable facility constitutes an entire subpart W facility, including those that report under more than one segment. Commenter 0327 stated that the EPA has properly discerned the need for and proposed a separate definition of applicable facilities that may be subject to the WEC. The commenter noted that some applicable facilities may report less than the 25,000 mt CO_2e threshold and the reporting threshold under subpart W could change.

Commenter 0327 additionally expressed support for the proposed definitions for "applicable facility," "facility applicable emissions," and "WEC applicable emissions." The commenter encouraged the EPA to consider requiring part 98 facilities that span multiple segments to reconfigure so that they fit within only one segment.

Response 3: The EPA acknowledges the commenter's comment. In response to the suggestion made by the commenter to consider the reconfiguration of subpart W facilities to align with only one industry segment, the EPA considers this comment to be out of scope of this rulemaking.

Comment 4: Commenters (0212, 0291, 0297, 0300) disagreed with the proposed implementation of the "applicable facility" definition as it applies to subpart W facilities that report under two or more industry segments.

Commenters (0212, 0297, 0300) stated that this proposal appears to create a structure that would compel operators to sum emissions of their operations in a basin to include, for example, their oil and natural gas production operations and their G&B operations such that if each were below 25,000 mt/year but the sum were above 25,000 mt/year, their operations would then become subject to the WEC. The commenters asserted that this extends an already inappropriate approach to a facility definition outlined in subpart W to arbitrarily capture even more operations for what is solely intended to make them subject to the WEC.

Commenter 0291 stated that this methodology may lead to the imposition of emissions estimation requirements on additional sites and operating companies that are currently exempt and that such a shift will likely result in an undue administrative and operational burden on the industry.

Response 4: The EPA disagrees with the commenter's statement that facilities that operate under multiple industry segments are unfairly affected under the WEC rule. As stated in section II.A.1. of the preamble to the final rule, for a WEC applicable facility that operates within multiple industry segments, each industry segment is assessed separately (*i.e.*, using the industry segment-specific throughput and methane intensity threshold) and then summed together to determine the waste emissions threshold for the facility. The EPA considered an alternative approach that

would have assessed 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. However, 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 plain statutory text, the EPA is finalizing as proposed to assess WEC applicability based on the entire subpart W facility's emissions that are reported under subpart W.

Regarding commenters claim that this implementation would require that an owner or operator combine emissions from their oil and natural gas production operations with their gathering and boosting operations, the EPA disagrees. The definition of an applicable facility with the WEC program relies upon the same definitions utilized in reporting to subpart W of the GHGRP. Subpart W, at 40 CFR 98.238, provides industry segment-specific facility definitions for four industry segments: natural gas distribution, onshore petroleum and natural gas gathering and boosting (G&B), onshore petroleum and natural gas production (Onshore Production), and onshore natural gas transmission pipeline. Based upon these industry segment-specific facility definitions, it would not be possible for multiple industry segments in these segments to be co-located at the same facility under subpart W, and thus they would also not be part of the same WEC applicable facility.

All other subpart W industry segments report based upon the definition of facility provided in subpart A of the GHGRP, at 40 CFR 98.6, which defines a facility as: "any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right-of-way and under common ownership or common control, that emits or may emit any greenhouse gas. Operators of military installations may classify such installations as more than a single facility based on distinct and independent functional groupings within contiguous military properties." For operations in the industry segments that use this definition of facility, it is possible for operations in multiple industry segments to be co-located at the same facility under subpart W, and thus also to be part of the same WEC applicable facility. The EPA notes that based on data for the 2022 reporting year under the GHGRP, no more than two dozen facilities report data for multiple segments at the same facility.

Comment 5: Commenter 0906 stated that the final rule should make clearer that the natural gas distribution segment is excluded from all aspects of the WEC program. The commenter acknowledged that the proposed rule is not inconsistent with CAA section 136(d) in this regard but suggested the following revisions for added clarity:

Regarding the inclusion of NAICS code 221210 in Table 1 of the preamble to the proposed rule, the EPA should state that the NAICS definition of "natural gas distribution" is broader than the subpart W definition, the subpart W definition is the one that is relevant to WEC applicability, and Section 136(d) excludes the subpart W-defined natural gas distribution segment from the WEC.

Regarding the WEC applicability determination, the EPA should revise the terms "applicable facility" and "WEC applicable facility" and add a definition of "applicable segment" as follows:

Applicable facility means a facility within one or more of the nine applicable segments, as defined in this section. In the case where operations from two or more applicable segments are co-located at the same part 98 reporting facility, operations for all co-located applicable segments constitute a single applicable facility under this part.: An applicable facility does not include any industry segment that is not an applicable segment as defined in this section.

Applicable segment means one of the following industry segments, as those industry segment terms are defined in 40 CFR 98.230 of this chapter:

(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.

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 mt CO_2e per year. Only emissions reported for an applicable segment, as defined in this section, shall be included when determining whether a facility is a WEC applicable facility.

The EPA should revise preamble discussion for additional clarity that a facility that operates within multiple industry segments need only consider the applicable segments (based upon the previously suggested definition) when determining applicability under the WEC program and that ancillary guidance documents, including the flowchart graphic titled “Steps for Determining Waste Emissions Charge Applicability and Obligation”, should be accordingly updated.

Regarding the calculation of facility applicable emissions, the EPA should specify in the regulatory text and associated preamble language that inputs consisting of subpart W-reported data are for one of the nine specified industry segments (aligning with the previously suggested definition of "applicable segments").

Response 5: The EPA agrees that natural gas distribution facilities, as defined and reporting to subpart W, are not applicable facilities for purposes of the WEC program under 40 CFR 99. The term "applicable facility" for purposes of the WEC program is defined at 40 CFR 99.2. This definition is based upon the subpart W industry segments listed at CAA section 136(d). Neither 40 CFR 99.2 nor CAA section 136(d) include the subpart W natural gas distribution industry segment. The EPA further acknowledges that "natural gas distribution" as defined for purposes of the North American Industrial Classification System (NAICS) is distinct from the use of the term under subpart W and the WEC program and that CAA section 136(d) does not subject the subpart W-defined natural gas distribution industry segment to the WEC program.

The EPA disagrees with the commenters suggested revisions to the terms "applicable facility" and "WEC applicable facility" as well as the addition of the term "applicable industry segment." The EPA does not find that addition of these terms is necessary to implement the directives of CAA section 136, or to ensure clarity. The EPA notes that under subpart W, at 40 CFR 98.238, an industry segment-specific facility definition is provided for the natural gas distribution industry segment. Based upon this industry segment-specific facility definition, it would not be possible for multiple industry segments to be co-located at the same natural gas distribution facility reporting to subpart W. Thus, the EPA does not find a need for the additional regulatory definition or revised language suggested by the commenter.

Comment 6: Commenter 0197 requested that the EPA clearly state in the final rule that producers who generate less than 25,000 metric tons of CO_2 are not obligated to submit any kind of report to the EPA to alleviate administrative burdens on small producers and expressed concern that the implementation of WEC will disproportionately impact small operators, particularly operators of marginal vertical wells. Commenter 0290 agreed that the definition of "WEC applicable facility" should be based upon emissions reported under subpart W and noted that the definition will result in some facilities that report under the part 98 GHG reporting program not meeting the emissions threshold required to be a WEC applicable facility. Commenter 0906 stated that the final rule should clarify that subpart W emissions are the only GHGRP emissions relevant to WEC applicability. The commenter stated that during the January 25, 2024, technical outreach webinar, agency staff provided clarification that a facility is not a WEC applicable facility if it only exceeds the 25,000 mt CO_2e annual threshold by adding its subpart C combustion emissions to its subpart W emissions (*e.g.*, a facility with 20,000 mt CO_2e subpart W emissions and 6,000 mt CO_2e subpart C emissions is not a WEC applicable facility). The commenter noted that the preamble to the proposed rule includes a similar explanation about subpart C emissions in the context of netting, but stated that it would be helpful to have this stated in the context of WEC applicability as well as for other subparts that a report may currently or in the future report under, including subpart NN and the proposed new subpart B.

Response 6: The EPA has finalized the definition of a "WEC applicable facility" with clarifying revisions as discussed at section II.A. of the preamble to the final rule. A facility that is required to report 25,000 mt CO_2e or less to subpart W would not be considered a "WEC applicable facility." This definition is derived from the statutory language of CAA section 136(c) of the CAA that states that "[t]he 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 mt CO_2e of GHGs 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." The EPA confirms that only the methane emissions required to be reported to subpart W will be included in the determination of WEC for an applicable facility.

Comment 7: Commenter 0906 stated that the EPA should evaluate whether low-emitting natural gas facilities that provide essential functions for local distribution company (LDC) operations can be excluded from the WEC. The commenter stated that it is clear from section 136 of the Clean Air Act that Congress intended to exclude the natural gas distribution segment from the WEC program and encouraged the EPA to consider whether additional natural gas equipment with low methane emissions, such as peak-shaving plants or underground storage, can be excluded from the WEC when such equipment is a key part of a facility's natural gas distribution system.

The commenter provided as example that some LDCs have peak-shaving facilities that allow them to liquefy natural gas and store it when customer demand is low, then regasify the LNG and inject it into the distribution system when customer demand is high (*i.e.*, at its peak), such as during severe weather events. The commenter stated that these plants are often located inside the LDC custody transfer station (sometimes called the "city gate") such that LDCs consider them part of the distribution system, they have much smaller capacity than their LNG import/export counterparts, and that the peak-shaving plants are very low GHG emitters. The commenter stated that the same is true of some underground natural gas storage facilities owned or operated by LDCs.

Response 7: The EPA disagrees with the request made by the commenter to exclude low-emitting natural gas facilities, such as peak-shaving plants and underground storage from the provisions of the WEC rule. Under the statutory language of CAA section 136(d), an "applicable facility" is a facility within nine of the ten industry segments subject to subpart W, as defined in 40 CFR 98.230, excluding natural gas distribution. As such, the EPA does not believe that facilities that are identified as an applicable facility under the statute can be excluded from the WEC, regardless of the working relationship to the natural gas distribution industry segment.

Comment 8: Commenter 0266 stated that the EPA should require that any WEC applicable facilities or assets that are divested continue to report methane emissions and be subject to the WEC for five years after the year in which they were divested, even if the facility's reported subpart W emissions after divestment are less than 25,000 mt CO_2e. The commenter asserted that if these facilities do not remain subject to the WEC, there would be an incentive for WEC obligated parties to divest such facilities from their portfolio to avoid the WEC and result in gaming of the system wherein there will be many more facilities that fall under the 25,000 mt CO_2e threshold. The commenter stated that this would result in a far smaller decrease in methane emissions than if divested facilities remained subject to the WEC for a period of five years after divestment. The commenter stated that this treatment can be considered consistent with the reporting offramp procedures existent in the GHGRP. Further, the commenter stated that the EPA will need to establish a methodology for monitoring the divestment of facilities that have

subpart W emissions less than 25,000 metric tons of CO_2e and imposing the WEC for an additional five years. The commenter stated that financial economics literature has documented the detrimental impacts of analogous "regulatory arbitrage" in response to bank capital requirements.

Response 8: The EPA disagrees with the commenter's suggestion that facilities should continue to be subject to the WEC for five years following the divestment of assets where the facility's reported subpart W emissions after divestment are less than 25,000 mt CO_2e. The EPA is following the statutory text of CAA section 136(c) that states that, "[t]he 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 mt CO_2e of GHGs 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." The threshold of 25,000 mt CO_2e of GHGs is clearly established by Congress in this statutory text and carries no reference to divestment or other considerations. Divested assets still maintain the potential to be a WEC applicable facility if they are a subpart W facility after divestment and the WEC threshold is exceeded.

The EPA refers the commenter to section 17.5 of this response to comment document for discussion of subpart A amendments and continued reporting to the GHGRP for divested assets.

Comment 9: Commenter 0936 expressed concern that the definition of a "WEC applicable facility" may provide for real change from the rule or may just provide ways to avoid the WEC. The commenter expressed particular concern with the definition and 25,000 mt CO_2e threshold as it applies to flares. The commenter noted a specific flare that according to data from the World Bank emitted approximately 1.47 million cubic meters of methane in 2022 that they contended would not meet the WEC threshold as an individual flare but would meet the definition as an entire field. The commenter requested a definition for "WEC applicable facility" that would apply to field flares and stated that the people and communities around these fields deserve protection.

Response 9: The EPA has finalized the definition of a WEC applicable facility as proposed based upon the statutory language of CAA sections 136(c) and 136(d). Under the final rule, a "WEC applicable facility" is considered 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. The EPA refers the commenter to section II.A.1. of the preamble to the final rule for further discussion of the definitions of "applicable facility" and "WEC applicable facility" and to 40 CFR 98.230 and 98.232 for the definitions of industry segments and associated reporting requirements for various source types, such as flares.

Comment 10: Commenter 0830 proposed setting the applicable emissions threshold at 1,000 tons of CH_4 annually in place of the proposed threshold of 25,000 tons of CO_2e. The commenter further proposed that the WEC charge amount should increase annually, commensurate with projected increases with the social cost of carbon. The commenter stated that the social cost of carbon should be calculated using a discount rate of zero.

Response 10: The EPA disagrees with the commenter's suggestion to change the applicable emissions threshold from 25,000 tons of CO_2e to 1,000 tons of methane and to modify the WEC charge amount to reflect the social cost of carbon. The emissions threshold is clearly established in the statutory text of CAA section 136(c), and the charge amount and time periods are clearly established in CAA section 136(e). The appropriate methodology to establish a social cost of carbon is considered to be outside the scope of this rulemaking. In the Regulatory Impact Assessment (RIA) accompanying this rulemaking, the EPA evaluated the social cost of methane ($SC\text{-}CH_4$) by quantifying climate benefits associated with this final rule and calculating the avoided climate related damages from reducing methane emissions. The EPA refers the commenter to the benefit-cost analysis contained in the RIA for full discussion of $SC\text{-}CH_4$.

1.2 "WEC obligated party" definition

Comment 1: Commenters (0281, 0283, 0288, 0291) opposed the proposed definition of "WEC obligated party." Commenters (0281, 0283) stated that the proposed obligation of a WEC obligated party to pay WEC obligations and charges on behalf of other owners of applicable facilities is both overly burdensome and unduly punitive on operators in the onshore petroleum and natural gas production industries. The commenters provided a summary of the proposed definitions for "WEC obligated party", "operator", and "owner" in the proposed rule, as well as the existing definition in subpart W of a facility in the context of onshore petroleum and natural gas production. The commenters asserted that operatorship and ownership are not synonymous or necessarily analogous, that the distinction between the two is critical, and that the nuances are not respected in the proposed rule. The commenters stated that an "operator" of onshore upstream assets is responsible for the drilling of wells and the daily management and operation and does so on behalf of other "non-operators." The commenters further explained that non-operators own a leasehold interest covered by a Joint Operating Agreement (JOA) and that based on the proportion of the acreage held by each party, each party has a "working interest." Commenter 0291 further stated that many owners are "non-operators" and do not exercise operational control, nor do they have the capacity to directly influence emissions reductions. Imposing potential WEC liability on these non-operational owners would be incongruous with long-standing financial practices within the industry and could introduce unwarranted complexities and conflicts.

The commenters stated that under the proposed rule, an operator would be responsible for assessing WEC charges on a facility basis. The commenters asserted that in virtually no circumstances are the contract areas of a JOA inclusive of entire basins or facilities as defined in 40 CFR 98.238 and that as currently defined, a "facility" could include thousands of JOAs and in turn, a JOA, in some instances, can include 10 or more non operators. As a result, the commenters stated that at a "facility" level, there might be multiple operators and tens of thousands of overlapping working interest owners.

The commenters asserted that under subpart W, consolidated gross emissions reports were acceptable because there was no requirement to then calculate the net amount for each working interest owner. However, under the proposed WEC assessment plan, the commenters asserted that there is a significant burden with incalculable cost on operators to recoup from each working

interest owners their share of the WEC charge. The commenters stated that as a result of turning businesses into collections agencies without the tools to do so, local, state, and Federal courts will be inundated by claims and counter claims.

The commenters recommended that for these reasons, the EPA should refine its definitions to accommodate established ownership/operatorship dynamics across basins, facilities, and individual wells. Further, the commenters recommended that at a minimum the EPA delay the implementation of WEC until a regulatory regime can be tested and implemented with necessary revisions made to subpart W.

In addition, commenter 0283 noted that ownership of mineral rights in any given tract of land and the ownership related oil and gas leases of those mineral rights is complex and often fractionated among tens or sometimes hundreds of different parties, it is obvious that it can be very complex to determine ownership (and the related costs and expenses attributable to each party) of oil and gas assets.

Commenter 0288 stated that the proposed definition of "WEC obligated party" brings a burdensome reporting requirement and unfair cost application to the oil-and-gas producer. The commenter stated that the working interest ownership of each well varies greatly, some wells have over 50 working interest owners, and that each working interest owner is accountable for their share of well costs including the imposed methane taxes. The commenters stated that additional technical and administrative analysis will be required to allocate the WEC obligation to each respective working interest owner, that this analysis will be costly, and that time will be needed to create this process and ensure contractual agreements are updated accordingly.

Response 1: The EPA recognizes the complexity of ownership and operator agreements. However, the EPA is finalizing what it has identified to be the best reading of the Congress's directive—and the EPA notes that the commenter did not provide an alternative means of implementation that is consistent with the text of CAA section 136. The EPA notes that CAA section 136(c) reads, in part, "[t]he 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…". Consistent with this directive, the EPA proposed and is finalizing a definition of "WEC obligated party" that places the responsibility for payment of WEC on the owner or operator of the WEC applicable facility. In cases where a WEC applicable facility has more than one owner or operator, the WEC obligated party shall be selected by an agreement binding on each of the owners and operators involved in the facility.

In fact, the complexity noted by the commenter is an argument in favor of the general structure of this definition of WEC obligated party. Rather than attempt to characterize in regulation the myriad of joint operating agreements and relationships between owner(s) and operator(s) of an individual WEC applicable facility, the EPA provided the maximum flexibility to entities subject to the rule within the constraints established by CAA section 136. The EPA believes the settlement of responsibility for submission of reports under part 99 and apportionment of WEC obligation amongst multiple parties is best left to the respective owners and operators.

With respect to comment on delaying the implementation of WEC related to the complexity of facilities with multiple owners and/or operators, the EPA does not have the legal authority to delay the assessment of the WEC for the consideration of joint operating agreements. The EPA refers the commenter to section 8 of this response to comment and section II.A.3. of the preamble to the final rule for further discussion.

Comment 2: Commenters (0239, 0298) stated that the proposed definition of "WEC obligated party" is unnecessary, and that the EPA should instead simply use the party making subpart W filings for the applicable facilities as the entity with the WEC obligation. Commenter 0239 asserted that 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.

Commenter 0298 noted under the subpart W proposed rule, the EPA had proposed the use of a "historic reporting representative." The commenter stated that obligations for past subpart W filings and past WEC filings should be placed on the same party under both rules.

Response 2: The EPA disagrees with commenters stating that the definition of "WEC obligated party" is unnecessary or that the owner or operator reporting under subpart W should be required to be the WEC obligated party. As noted in response 1 of section 1.2 of this response to comment document, the EPA recognizes that there are a variety of ownership and operatorship agreements within the petroleum and natural gas systems industry. As discussed in section II.A. of the preamble to the final rule, we are aligning the reporting requirements under part 98 and part 99. In most cases, the EPA anticipates that the owners and/or operators of a WEC applicable facility would elect to have the same designated representative or historic designated representative, as appropriate, for purposes of both parts 98 and 99, or if they chose a different designated representative or historic designated representative for part 98 that they would be associated with the same owner or operator that is the WEC obligated party.

Comment 3: Commenter 0282 recommended maintaining the owner or operator approach regarding WEC applicable facilities. The commenter stated that the single owner or operator approach is consistent with other regulations and reporting requirements.

Commenter 0327 stated strong support for the proposed definition of "WEC obligated party" and agreed that alignment between the owner or operator definitions under subpart W and the proposed part 99 is necessary given that the WEC is premised on subpart W reported emissions. The commenter stated that it would be infeasible for the EPA to attempt to allocate different emissions and WEC obligations between multiple owners or operators of the same facility.

Response 3: The EPA acknowledges the commenter's support for the proposed definition of "WEC obligated party" and maintaining the owner or operator approach regarding WEC applicable facilities. The definition is being finalized as proposed, with clarifying edits, as explained in section II.A.3. of the preamble to the final rule.

Comment 4: Commenter 0271 requested that the definition of WEC obligated party be revised to include the parent company to allow for netting of emissions up to the level of parent company. Specifically, the commenter requested the term be defined as follows:
"WEC obligated party means the owner, operator, or Parent Company, as defined in this section for the applicable industry segment as of December 31 of the reporting year. In cases where the WEC applicable facility has more than one owner, operator, or Parent Company, the WEC obligated party shall be a person or entity selected by an agreement biding on each of the owners, operators and Parent Companies involved in the transaction, following the provisions of 40 CFR 99.4(b)."

Response 4: The EPA is finalizing the definition of "WEC obligated party" as proposed, with clarifying edits, as explained in section II.A.3. of the preamble to the final rule. Regarding parent company and netting, the EPA refers the commenter to the final netting provisions as discussed in sections II.B. of the preamble to the final rule.

Comment 5: Commenter 0273 requested that the definition of "WEC obligated party" be revised to replace the phrase "as of December 31 of the reporting year" in the proposed definition with "at the end of the reporting year." The commenter stated that this revised definition has the same effect as the proposed definition but eliminates ambiguity for any ownership changes on December 31.

Response 5: The EPA believe the commenter intended to address this comment to the proposed definition of "WEC obligated party" and disagrees with the suggested revision. The EPA is finalizing the definition of "WEC obligated party" as proposed, with clarifying edits, as explained in section II.A.3. of the preamble to the final rule. The EPA acknowledges that the suggested revision is synonymous, but has finalized the portion of the referenced definition as proposed for consistency with term definitions in subpart A of part 98.

1.3 Other definitions

Comment 1: Commenter 0287 stated that the EPA should recognize that emissions resulting from a beneficial use of natural gas are not waste emissions intended to be subject to the WEC and suggested that a definition of "waste emissions" be added to the rule.

The commenter further stated that methane emissions resulting from performance of a beneficial function, such as stationary combustion, are not waste emissions and should not be subject to the WEC. The commenter asserted that the EPA has established precedent in distinguishing between emissions resulting from beneficial use and waste emissions and provided the following examples:

- The subpart W definition of "internal combustion" includes explanation that "combustion of a fuel" generates "useful mechanical energy" which clearly performs a beneficial use and function. Conversely, the definition of "vented emissions" specifically excludes stationary combustion flue gas. Further, the definition of "flare" is limited to combustion of "waste gases without energy recovery."

- The 2023 subpart W Proposal consistently makes distinction between total methane emissions and waste emissions.
- The text of CAA section 136(a)(3)(B) and (a)(3)(C) call for delineating between waste and beneficial emissions in making reference to "methane and other greenhouse gas emissions and waste."
- State gas capture programs, such as those in New Mexico and North Dakota, recognize the distinction between waste emissions and total emissions and deem gas used for combustion as beneficial use.
- Consideration must be given to the implications of potentially conflicting regulatory drivers of reducing criteria pollutant emissions while also reducing the methane fee obligation. The commenter noted the inverse emissions relationship between NO_x and GHG and asserted that the increased cost of lower NO_x technology may not be feasible.

The commenter stated that beneficial use emissions, such as those resulting from combustion, could be established as not subject to the WEC in several ways. The commenter stated that the simplest way would be to require the reporting of combustion emissions to subpart C of the GHGRP for all industry segments of subpart W. In the alternative, the commenter stated that the EPA should develop a definition and other appropriate regulatory text to exclude these emissions from the WEC.

Response 1: The EPA does not agree with the commenter's suggestion to define "waste emissions" under the final rule or to otherwise delineate between classifications of methane emissions that are reported to subpart W of the GHGRP that would or would not be subject to charge. Section 136(c) of the CAA establishes the applicability of the waste emissions charge as applying to "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 mt CO2e of GHGs emitted per year pursuant to subpart W of part 98 of title 40, Code of Federal Regulations." Further, CAA section 136(e)(1) specifies the determination of charge and includes as a term "the number of metric tons of methane emissions reported pursuant to subpart W of part 98 of title 40, Code of Federal Regulations, for the applicable facility that exceed the applicable annual waste emissions threshold listed in subsection (f) during the previous reporting period..." In both cases, Congress made clear reference to methane emissions in stating the emissions subject to charge and did not include an exclusion or provide direction to exclude some portion of methane emissions that are reported to subpart W. When reviewed in the full context of CAA section 136 provisions related to the Waste Emissions Charge, the term "waste emissions" are the amount of "total methane emissions" from the facility that exceed the thresholds specified at CAA section 136(f) from a facility meeting the applicability criteria of CAA section 136(c) and (d).

Although we disagree with the commenter's interpretation of "waste emissions" as noted above, we also want to note that we disagree with the commenter's suggestion to categorize emissions from 'beneficial use' of natural gas differently from other emissions. Although stationary combustion of natural gas may be a beneficial use of natural gas (as opposed to venting or flaring), the methane emissions that result from stationary combustion are due to inefficiencies such as methane slip, which occurs when methane in fuel gas is not combusted and converted to

carbon dioxide and is therefore not generating useful mechanical energy. Therefore, those methane emissions that would be reported under subpart W of the GHGRP for stationary combustion were not beneficially used. We also note that owners and operators are not subject to a charge under the WEC for the emissions of carbon dioxide that result from complete combustion in stationary combustion equipment.

The references to waste emissions and total emissions in the preamble to the 2023 subpart W proposal noted by the commenter are quotations or summarizations of CAA section 136(h). Regarding the commenter's statement regarding the use of the phrase "methane and other greenhouse gas emissions and waste" in CAA section 136(a)(3)(B) and (C), these provisions are outside of the scope of this rulemaking given the clear use of the term "methane emissions" without qualification in CAA section 136(c) and (e).

With respect to the usage of the terms "waste gas(es)" in subpart W, to respond to these comments and without reopening the part 98 subpart W provisions, please refer to response to similar comments in section 20.4 of "Summary of Public Comments and Responses for 2024 Final Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems under the Greenhouse Gas Reporting Rule."[4]

To the extent that the comment touches upon the reporting of combustion emissions to subpart C of the GHGRP, these comments are addressed in section 17.6 of this response to comment document. Similarly, comments regarding the recently finalized amendments to subpart W are addressed in section 17.7 of this document.

Comment 2: Commenter 0267 stated that the proposed definition of "owner" is overly broad and could be interpreted to include equity interest partners. The commenter stated that most owners are considered "non-op" and do not have operational control of the facilities nor the ability to reduce emissions and thus the potential WEC liability for these individuals is inappropriate and conflicts with decades of financial practice within the industry.

Commenter 0291 recommended the following definition for the term "operator":

"Operator" means the person or persons responsible for the overall operation of a stationary source.

The commenter also recommended the following definition for the term "owner":

"Owner" means the person or persons who own a stationary source or part of a stationary source.

Response 2: The EPA disagrees with the commenter's suggestion related to the definitions of the terms "owner" and "operator" and is finalizing the definitions as proposed. As discussed in section II.A.3. of the preamble, these definitions were developed to be consistent with existing definitions in subpart A and the industry specific definitions in subpart W of part 98. Section

[4] Available at https://www.regulations.gov/document/EPA-HQ-OAR-2023-0234-0456

136(c) of the CAA directs that the waste emissions charge is imposed and collected from the owner or operator of an applicable facility reporting to subpart W of the GHGRP. As such, the EPA believes it is consistent with Congressional intent to define the terms "owner" and "operator" the same across both rules. The suggested definitions from the commenter do not provide additional clarity and deviate from existing definitions used in the GHGRP. For a complete discussion of the EPA's determination in this matter, see section II.A.3. of the preamble to the final rule.

Comment 3: Commenter 0271 recommended that the term "Offshore petroleum and natural gas production owner or operator" be defined as follows: "Offshore petroleum and natural gas production owner or operator means the Designated Operator identified by the Bureau of Safety and Environmental Enforcement (BSEE) for a facility."

Response 3: The EPA disagrees with the commenter's suggestion to define the term "offshore petroleum and natural gas production owner or operator" in the final rule. The final definitions for "owner" and "operator" and for industry segment specific owners and operators were developed to be consistent with existing definitions under subparts A and W of part 98. The EPA did not and is not reopen these existing part 98 definitions in this rulemaking and these existing part 98 definitions do not provide an industry segment specific definition for the offshore petroleum and natural gas production industry segment. The EPA does not believe there is a need or that it would be appropriate to promulgate one for WEC program implementation. Establishing such a definition under this rule would raise the potential for inconsistent applications of the terms between the GHGRP and WEC programs.

Comment 4: Commenter 0271 stated support for the definition of "natural gas" and stated it was consistent with the definition in subpart W. The commenter did not recommend using the term "pipeline quality gas" for the reasons stated in the Technical Support Document (TSD) of the subpart W proposal.

Response 4: The EPA acknowledges the comment on the proposed definition of "natural gas", which is being finalized as proposed. With respect to comment on the use of the term "pipeline quality gas", the term was not proposed to be defined under this rulemaking for part 99. With regard to that term under the GHGRP, that is outside the scope of this rulemaking; the commenter is referred to the response to comment document for the 2024 Subpart W Final Rule.[5]

Comment 5: Commenter 0150 suggested adding a definition for "facility efficiency", and if appropriate, indicate that is synonym with "methane emissions intensity." The commenter also suggested adding a definition of "applicable thresholds" and state that is a synonym with "waste emission threshold" as defined in the rule. The commenter stated that these definitions would provide greater clarity and reduce ambiguity.

Response 5: The EPA disagrees with the commenter and has not added definitions for "facility efficiency" and "applicable thresholds" to the final rule. The EPA does not believe these terms

[5] Available at https://www.regulations.gov/document/EPA-HQ-OAR-2023-0234-0456

are necessary for WEC program implementation and believes that establishing additional definitions that are synonymous with defined terms would be duplicative and create ambiguity. Additionally, an established definition for “facility efficiency” has the potential for confusion with waste emissions thresholds.

2 Waste Emissions Thresholds

Comment 1: Commenters (0185, 0194, 0195, 0198, 0213, 0291) stated that there is limited instructions and guidance on how to calculate methane emissions, determine WEC applicability, whether facilities that are below the threshold are fully exempt and what requirements are placed on exempt producers, and the definition of a "facility" for purposes of the WEC. The commenters urged the EPA to delay the implementation of the WEC in order to provide necessary time to train companies on compliance.

Commenters (0185, 0194, 0195, 0198, 0213) requested that the EPA provides additional guidance, training sessions, and resources to help educate facilities on WEC compliance and how to calculate the tax obligation properly.

Response 1: The EPA is committed to clear regulatory guidelines and transparency. Per section I.C.2. of the preamble to this final rule, the Waste Emissions Charge is calculated based upon methane emissions reported pursuant to subpart W and builds upon previous subpart W rulemakings. Section II.C. of the preamble outlines the calculation methods used to determine WEC applicability for facilities. Furthermore, the EPA will be holding further webinars and providing technical guidance to ensure WEC compliance and adherence to the regulations. Potential topics for these webinars and guidance documents could include the calculation of methane emissions, the determination of WEC applicability, reporting requirements, and the definition of a “WEC applicable facility.” Additionally, the final rule amended the WEC filing to be completed by August 31st instead of the proposed March 31st filing date, which will provide facilities additional time to prepare their reports. See section 1.1 of this response to comment document for response to comments regarding the proposed definition of a "WEC applicable facility. See section 17.7 of this response to comment document for response to comments related to the recent subpart W rulemaking. See section 7 of this response to comment document for comments related to the timeline of WEC implementation.

Comment 2: Commenter 0286 expressed support for the proposed implementation of the calculation of the charge, netting, and exemption criteria established under WEC. The commenter further asserted that the WEC is being utilized as intended to provide reinforcement to MERP and the EPA's emission standards efforts.

Response 2: The EPA acknowledges the commenter's support for the proposed calculation of the waste emissions charge, the netting applicability, and exemption criteria. The EPA is finalizing the calculation of the waste emissions charge as proposed. See revisions from proposal to netting as discussed in section 3 of this response to comment document. See the EPA’s revisions from proposal to the netting of emissions, regulatory compliance exemption, and plugged well exemption in sections II.B., II.D.2., and II.D.3. of the preamble to the final rule.

Comment 3: Commenter 0203 stated that gradually lowering the emissions thresholds will encourage continuous improvement in emissions reduction technologies and practices.

Commenter 0264 stated that the threshold of a WEC applicable facility should be lowered from 25,000 metric tons of CO_2e to make sure that operations that exceed methane emissions over the new standard are encountering more serious consequences.

Response 3: The waste emissions thresholds implemented in the final WEC rule were established under section 136(f) of the CAA, and the EPA does not have the authority to revise these waste emissions thresholds under the statute.

The 25,000 metric tons of CO_2e threshold implemented in the final WEC rule was also established under the statute by Congress, in CAA section 136(c), and the EPA does not have the authority to revise this threshold either under the statute.

Comment 4: Commenters (0149, 0153, 0154, 0155, 0157, 0160, 0161, 0174, 0227, 0536) requested that the final regulation include transparent calculations and methodologies to determine the emissions generated by WEC applicable owner and operators. Commenter 0227 further emphasized that accurate WEC assessment will encourage WEC applicable facilities to reduce emissions accordingly.

Response 4: The EPA acknowledges the commenter's feedback for the regulation to include transparent calculations and methodologies. The statutory text of CAA section 136(c) and (e) direct that the waste emissions charge shall be based upon emissions reported pursuant to subpart W. The EPA also notes that in the subpart W rulemaking, which is not reopened in this rulemaking, the EPA finalized revisions to ensure reporting is based on empirical data under subpart W and to ensure reported emissions accurately reflect total facility methane emissions.

See also section 17.7 of this response to comment document for response to comments related to the recent subpart W rulemaking.

2.1 Facility Waste Emissions Thresholds

Comment 1: Commenters (0188, 0294) expressed support for the EPA's proposed methodologies and emissions intensity thresholds used for calculating a facility's waste emissions thresholds. Commenter 0294 additionally stated that the data reported under subpart W can be used to easily calculate these thresholds.

Response 1: The EPA acknowledges the commenter's support for the proposed methodologies to calculate a facility's WEC applicable emissions. The EPA is finalizing the calculation methodologies and emissions intensity thresholds as proposed.

Comment 2: Commenters (0193, 0199, 0202, 0208, 0211, 0230, 0240, 0267, 0268, 0271, 0273, 0276, 0283, 0291, 0936) expressed concern with the calculation of methane intensity thresholds, stating that the proposed calculation does not take into account the products that upstream oil and

gas industry produces and in turn it punishes operators who produce large amounts of energy in the form of oil or natural gas liquids (NGLs) over other production profiles. These commenters requested that the EPA amend the Facility Methane Intensity calculation to define the numerator as the portion of the emissions relative to the amount of natural gas sent to sales or facility throughput, which is defined as an energy allocation approach. Under this approach, if natural gas is sent to sale from an applicable facility, the related methane emissions from the facility are multiplied by a gas ratio, which is calculated by dividing the energy content of the produced gas by the energy content of the total hydrocarbons (both oil and gas) produced from such facility. Without this allocation of energy, the commenters argued that the assessment of facilities' methane intensity is inherently biased, as it includes methane associated with total fluids in the numerator but only the gas portion of total sold is included in the denominator. Commenter 0271 suggested that Equation B-1 and B-2 were combined to depict the methane waste emissions threshold more accurately for any oil and gas facility.

Commenters (0211, 0230, 0240, 0268, 0271, 0276, 0283) argued that the proposed approach is unfair to oil-dominated production and production facilities that produce a mix of oil and natural gas and the calculation methodology is inherently biased. Commenter 0283 stated that the current waste emissions thresholds for Onshore Petroleum and Natural Gas Production industry are strictly divided between facilities that send natural gas to sale and facilities that have no natural gas sent to sale, and this does not represent industry operations that produce a mix of gas and oil. Commenter 0276 provided a supporting analysis that they stated showed that facilities that produced energy in the form of oil and/or NGLs were often projected to exceed the WEC threshold despite their assets having a low methane intensity on an energy basis. Commenters (0193, 0267, 0271, 0273, 0276) stated that operators required to apply a purely natural gas-based waste emissions threshold to all emissions associated with a liquids production facility would be perversely incentivized to waste any associated gas, via combustion or power generation, to avoid the waste emissions charge from methane emissions incorrectly associated with a comparatively small volume of "gas sent to sales." Commenters (0193, 0199, 0202, 0208, 0230, 0268, 0271, 0276, 0291) believe that the utilization of an energy allocation approach would resolve the above issues.

Commenter 0276 argued that the EPA does not identify its authority to impose and collect a charge on emissions other than stated in CAA Section 136 (f)(1)(A) and (B), therefore, wherever there is natural gas sent to sale from the facility, the quantity of methane emissions in the numerator should reflect the total methane emissions attributable to the quantity of natural gas sent for sale represented in the denominator. Commenters (0193, 0267, 0276, 0283) defined this gas ratio as the energy content of the produced gas divided by the energy content of total produced hydrocarbons. Commenters (0193, 0267, 0273, 0276, 0936) further stated that this is supported by the adopted Natural Gas Sustainability Initiative (NGSI) protocol which uses an energy allocation basis by multiplying the methane emissions by a gas ratio (which is defined as the energy content of the produced gas divided by the energy content of the total hydrocarbons) and claimed that this energy allocation approach is consistent with life cycle assessments, the development of the California Low Carbon Fuel Standard (CLCFS) and renewable fuel standard for transportation fuels, and its importance was referenced by Allen when studies were conducted to evaluate emissions from natural gas and oil production. Commenter 0936 proposed

that the EPA reevaluate the work denoted in the NGSI because they believe that Congress based the Waste Emissions Charge thresholds on that body of work.

Commenters (0193, 0267, 0273, 0276) argued that the CAA indicates that the methane emissions subject to evaluation against the Waste Emission Threshold are those emissions attributable to the specifically listed product, and Congress established differing metrics with the understanding that methane emissions can be generated from both natural gas production and oil production. Commenters (0193, 0267, 0276) expressed that the EPA went beyond the statutory text when it proposed to interpret the reported metric tons of methane emissions to mean all reported methane emissions from a facility, as reported under subpart W. Both commenters stated that the WEC Facility Methane Emissions should be those reported pursuant to subpart W that are attributable to the relevant product in the segment Waste Emissions Threshold instead. Commenter 0276 further emphasized this point by pointing to Section 136(h) text that stated that subpart W revisions ensure that reports "accurately reflect the total methane emissions and waste emissions from the applicable facilities." Under this text, Commenter 0276 strongly believed that there is a delineation between total methane emissions and waste emissions and that the intention is not to impose and collect WEC charges on all methane emissions, but rather on the waste emissions that exceed the waste emissions threshold for the specific industry segments.

Under the proposed WEC rule, commenters (0267, 0276) further stated that the assignment of all methane emissions to the natural gas portion of production and processing suggests that US oil and NGLs have a methane intensity of zero, but there are facilities that emit methane that are exclusively dedicated to liquids production or processing. Commenters (0267, 0276) stated that Congress dedicated a specific waste emissions threshold for production facilities with no marketed natural gas to address this (and identified natural gas boosting and gathering facilities with zero reported throughput of gas), but under the current rule, they are incorrectly considered in excess of the waste emissions threshold for any and all reported emissions. According to commenters (0267, 0276), the utilization of an energy allocation approach would resolve this issue.

Commenter 0276 acknowledged that the EPA previously considered energy allocation methods, but ultimately decided upon an alternative due to the data reporting constraints under subpart W. Commenters (0193, 0199, 0202, 0208, 0230, 0276) opposed this interpretation, and believed that the data under subpart W could support an energy allocation approach if the EPA would include standard, representative energy conversion factors to apply to the reported quantities of gas and liquid products, pointing to the proposed method of consistently applying the density of methane to the natural gas quantity irrespective of small variations in sales gas composition.

Commenter 0283 requested that if the EPA does not adopt an energy allocation approach, then they ask that the EPA address this issue by revising proposed 40 CFR 99.20 to allow a WEC obligated party to calculate a combined threshold which incorporates the individual thresholds for gas and oil production at a given facility on a proportional basis.

Response 2: The EPA does not concur with the request made by the commenters to "define the numerator as the portion of the emissions relative to the amount of natural gas sent to sales or

facility throughput" and utilize an "energy allocation approach." The delineation between natural gas and oil production is based on the statutory language of CAA section136(f) that differentiates industry segment-specific methane intensity thresholds 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 statute specifies that 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. Congress specifically established a separate oil methane intensity threshold in this language, and Congress did not specify that another methane intensity threshold be used in the case that a producer sends quantities of both oil and gas to sale. Therefore, the EPA did not propose nor finalize an energy allocation approach and is finalizing the calculation of the methane intensity thresholds as proposed. As such, the EPA did not combine equations B-1 and B-2 into one overall equation to reflect facilities that produce quantities of both oil and gas, nor did the EPA develop representative energy conversion factors for gas and liquid products. Equations B-1 and B-2 are finalized as proposed. For the EPA's complete discussion of waste emissions thresholds and associated charges, please refer to section II.C. of the preamble to the final rule.

The EPA disagrees with the interpretation that the reported metric tons of methane emissions to be evaluated under WEC should not represent all reported methane emissions from a facility, as reported under subpart W. Such an interpretation would be at odds with the plain text of the statute and Congress's directive for the EPA to impose a charge on "methane emissions that exceed an applicable waste emissions threshold." 42 U.S.C. 7436(c). In order for the EPA to determine whether or not a WEC applicable facility's methane emissions fall above the applicable threshold, the EPA must calculate *total* methane emissions, and apply the charge to those emissions, if any, that fall above the threshold. CAA section 136(h) also supports the EPA's understanding in this matter because it directs the EPA to revise subpart W so as to "accurately reflect the *total* methane emissions and waste emissions from the applicable facilities" (emphasis added). The EPA believes that the utilization of subpart W reporting results in accurate reporting of methane emissions that are subsequently used to determine WEC obligation. By utilizing subpart W reporting data, the EPA believes that the WEC charge is being imposed and collected as defined in CAA section 136(f)(1)(A) and (B).**Comment 3:** Commenter 0287 supported the EPA's approach for utilizing natural gas throughput as a key metric under the WEC provisions of the CAA and to determine which emissions are constituted as waste emissions over segment-specific thresholds. Commenter 0287 agreed with the EPA's approach in equations B-1, B-3, and B-4 to calculate facility waste emissions thresholds by calculating the volume of gas at the given industry segment-specific methane intensity and then calculating the mass of the volume, as methane, by the density of methane. Commenter 0287 believed that this proposed approach is simple to implement and relatively straightforward. In contrast, Commenter 0287 expressed concern that the alternative approach considered by the EPA which uses the mass of methane emissions divided by the calculated mass of a facility's natural gas throughput would require facilities to collect and report detailed information on the facility's natural gas composition and throughput, making it more difficult for facilities to file for WEC.

Response 3: The EPA acknowledges the commenter's support for equations B–1, B–3, and B– 4 as proposed; including multiplying natural gas throughput by multiplying by the density of methane. The EPA is finalizing equations B-1, B-3, and B-4 as proposed.

Comment 4: Commenters (0196, 0212, 0240, 0267, 0288, 0289, 0300) stated that natural gas should not be used as the basis of determining WEC thresholds, as natural gas is denser than methane, and the EPA is effectively lowering the emissions threshold by using the density of methane in place of natural gas for equation B-1. These commenters suggested that utilizing the density of natural gas in lieu of the density of methane should be an option when calculating WEC thresholds in equation B-1. Commenter 0196 supported this notion by stating that the equation needs to reflect methane emissions over the total production rather than methane emissions over methane production.

Commenter 0212 expressed that there was inconsistency between the usage of natural gas and methane in the EPA's interpretation of the WEC, as the statutory text clearly lists natural gas as the throughput value (excluding production facilities that only produce oil). Commenters (0212, 0267, 0289) additionally stated that although the EPA suggested using the density of methane to decrease the reporting burden on industry, the data currently reported under subpart W could be implemented to develop natural gas density estimations and would not require the reporting of additional data unlike other alternative methane intensity methodologies.

Commenters (0212, 0240) referred to a memorandum, "Composition of Natural Gas for use in the Oil and Natural Gas Sector Rulemaking" to provide natural gas composition data for its regulations, which calculated a 0.0535 lb/scf, which is 30percent higher in comparison to the density of methane of 0.0416 lb/scf. Commenters (0212, 0240) additionally proposed another alternative for the EPA to work with organizations such as the Energy Information Administration (EIA), the Gas Technology Institute, and Enverus to develop AAPG basin average natural gas densities. Both commenters argue that these densities could be used more accurately when no other information is available, in comparison to utilizing the standard density of methane.

Commenters (0212, 0240) proposed the option that operations should be able to provide natural gas-density information based upon their own operations and the EPA needs to provide a framework for the submission of such data.

Response 4: The EPA does not concur with the request made by the commenter to utilize the density of natural gas in lieu of the density of methane in equation B-1. The utilization of the density of methane is based on the statutory language of CAA section 136(f)(1)(A), which specifies that "the Administrator shall impose and collect the charge on the reported metric tons of methane emissions from such facility that exceed 0.20 percent of the natural gas sent to sale from such facility." In this statutory text, Congress used both "natural gas" and "methane" within the statutory language in CAA section 136 (f)(l)-(3), which the EPA interpreted as the intent to give each term independent effect. The EPA interpreted methane to represent the quantity of methane as reported under subpart W and natural gas to represent the quantity of natural gas sent to sale as reported under subpart W. The approach of using the density of methane in equations

B-1, B-3, and B-4 is 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 of methane. Additionally, it does not require information on constituents or density of natural gas throughput. As such, the EPA will not be incorporating the utilization of facility-specific natural gas density for the calculation of equation B-1.

Regarding the commenters who proposed the option to provide facility-specific natural gas density data, other commenters expressed opposing support for the standard use of the density of methane in equation B-1, as it would decrease the reporting burden. After consideration of all comments, the EPA is finalizing equation B-1 as proposed.

Comment 5: Commenter 0284 supported the EPA's determination that "natural gas sent to sale from or through" a facility in an industry segment other than oil and gas production is used as the denominator in determining the methane emissions intensity of a particular facility. Commenter 0284 stated that this approach is consistent with the statutory language and Congress; intent of using two separate terms, as CAA section 136(f)(1-3) refers to natural gas sent to sale, rather than methane. Commenter 0284 further expressed that the EPA should not adopt an "alternative approach" that uses methane rather than natural gas as the throughput value.

Response 5: The EPA acknowledges the commenter's support for the use of subpart W data to determine the "natural gas sent to sale from or through" a facility. The EPA also acknowledges the support for utilizing the quantity of natural gas sent to sale rather than the quantity of methane sent to sale as the denominator in equation B-1. The EPA is finalizing equation B-1 as proposed.

Comment 6: Commenter 0327 stated that the industry segment-specific waste emissions thresholds are expressed as a rate of methane emissions per unit of natural gas or oil sent to sale or through a facility, and these figures would be reported as a volumetric throughput in units of either thousand standard cubic feet (Mscf) for natural gas or million barrels of oil. Under the current rule, the EPA has proposed to evaluate these industry segment-specific waste emissions thresholds on a metric tons of methane basis, requiring a conversion of oil and natural gas throughput volumes to mass rates and to convert volumetric waste emissions thresholds into metric tons of methane, the EPA proposed to multiply the applicable threshold by the density of methane. Commenter 0327 supported this above approach, but additionally recommended that the EPA consider including a factor for the concentration of methane in natural gas when converting volume of natural gas into mass of methane.

Commenter 0237 acknowledged that the EPA's approach is similar to approaches for estimating methane intensity utilized by industry-led programs, such as the Oil and Gas Climate Initiative.

Commenter 0237 stated that utilizing both the density and concentration of methane in natural gas to convert natural gas volumes to mass aligns with the statutory text and existing framework, as the volumetric throughput used in the calculation is reported under subpart W. Commenter 0237 stated that the Joint Environmental Commenters also recommend considering an additional

factor-the concentration of methane in the natural gas- to be included in the conversion of the volumetric throughputs of natural gas to mass emissions of methane. Commenter 0237 argued that by only utilizing the density of methane in the current rule, the EPA assumes that the natural gas is 100 percent methane, which does not align with subpart W calculation methodologies and the data used for various industry segments, such as onshore production, gathering and boosting, onshore natural gas transmissions compression, and underground natural gas storage. Commenter 0237 continued to state that the Joint Environmental Commenters additionally recommend that the EPA multiply the volumetric throughput by both the density of methane and the methane concentration to convert natural gas throughput to metric tons of methane, as the addition of methane concentration will more accurately reflect the methane content of the natural gas and may result in a lower waste emissions threshold,

Response 6: The EPA does not concur with the request made by the commenter to utilize both the density and concentration of methane in natural gas to convert natural gas volumes to mass when calculating waste emissions thresholds. Within the statutory language of CAA section 136 (f)(l)-(3), Congress used both "natural gas" and "methane" to give each term independent effect. The EPA interpreted this congressional language for methane to represent the quantity of methane as reported under subpart W and natural gas to represent the quantity of natural gas sent to sale. As noted in a previous response, the approach of using the density of methane in equations B-1, B-3, and B-4 is also 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 of methane. The EPA disagrees with the commenter that Congress intended to represent natural gas sent to sale as the methane content of the natural gas. As such, the EPA is not incorporating the utilization of facility-specific concentration of methane in natural gas as a means of calculating waste emissions thresholds.

Comment 7: Commenter 0284 requested that the EPA expressly identify which subpart W provisions are acceptable for representing "natural gas sent to sale from or through" for a facility in the final rule.

Response 7: The EPA acknowledges the commenter’s request for clearly identified subpart W provisions that are acceptable to represent “natural gas sent to sale from or through.” The EPA refers the commenter to section II.C. of the preamble to the final rule for the identification of which subpart W reporting elements accurately reflect the appropriate throughput metrics for various industry segments, as well as the defined interpretations of natural gas sent to sale from or through.

Comment 8: Commenters (0180, 0212, 0221, 0222, 0226, 0235, 0240, 0288) expressed concern that the current approach is unfair to oil-dominated production. Commenters (0212, 0240) referred to the voluntary emissions intensity programs that they believe were used to develop the WEC thresholds and argued that these factors were developed by producers that were primarily natural gas dominant, therefore it does not reflect production that is primarily petroleum with minimal or limited natural gas sales. Commenters (0180, 0221) requested that a footnote is included for Table 2 of the WEC final rule that specifies how the percentages were arrived at to

help support a better understanding of the waste emissions thresholds and their respective calculations.

Commenters (0212, 0240) further expressed that the emissions threshold for petroleum production with no natural gas sales is inconsistent with the threshold for natural gas production facilities and generates a threshold that is difficult to meet, as the emissions threshold is approximately 29 times lower for oil production than natural gas, when converting on a standard energy equivalency, and any natural gas sent to sales effectively lowers this threshold further. Commenter 0288 specifically requested that the permitted emission thresholds for oil production be revised to 292 metric tons per one million barrels, as 1 bbl of oil is equivalent to 6mcf of natural gas on an energy basis and utilizing the 0.2 percent methane intensity value for natural gas would yield this threshold for oil producers.

Commenters (0222, 0226) expressed concern with the emissions thresholds and referred to recent efforts by the oil and natural gas production segment to decrease emissions by nearly 70 percent between 2011 and 2019 via technology and efficiency measures. Commenters 0222 and 0226 expressed additional concern that many of the producers that they represent are oil-dominant, there is a lack of guidance for properly calculating emissions for oil-dominant producers, and under a recent Department of Energy Report, Quantification of Methane Emissions from Marginal (Low Production Rate) Wells, found that the emissions were considered "nominal."

Response 8: The EPA acknowledges the commenters' concern regarding the different industry segment-specific methane intensities established for oil and natural gas production; however, the EPA is implementing the methane intensities set by Congress in CAA section 136(f). Congress anticipated and acknowledged that onshore production facilities could produce different products, and Congress explicitly set different segment-specific methane intensity thresholds based on whether the facility is sending natural gas to sale or only sending oil to sale. Congress set the waste emissions threshold as 0.20 percent of the natural gas sent to sale and 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. Since Congress set these thresholds, the EPA does not have the statutory authority to revise these thresholds, as requested by commenters. Furthermore, since the EPA did not calculate these thresholds, the EPA is not adding a footnote to Table 2, as requested by commenters, describing how the percentages were arrived at.

Because Congress did not set different methane intensity thresholds based on other products, nor did Congress establish separate emissions intensity metrics for mixed production of both natural gas and oil, the EPA is finalizing the industry segment-specific methane intensities as proposed.

In regard to the commenters discussing a lack of guidance for properly calculating emissions for oil-dominant producers, the EPA considers this comment out of scope for the WEC rulemaking and, without reopening the subpart W provisions, refers the commenter to section III.D. of the preamble to the final subpart W rule. **Comment 9:** Commenter 0240 stated that the current WEC rule punishes WEC applicable facilities by effectively reducing the threshold when only allowing petroleum or natural gas volumes "sent to sale" to be used in the calculations of equation B-1.

Commenter 0240 argued that obligated parties are required to calculate and report emissions associated with all produced volumes in Onshore and Offshore Production Segments and likewise for all volumes gathered in the Onshore Gathering and Boosting segment, rather than solely volume sent to sale. Commenter 0240 requested that the EPA revise the WEC threshold calculations to allow total produced or gathered volumes rather than quantity sent to sale for the onshore and offshore production and onshore gathering and boosting industry segments, respectively.

Response 9: The EPA does not concur with the request made by the commenter to change the quantities of natural gas and oil sent to sale to instead represent the total produced or gathered volumes for the onshore and offshore production and onshore gathering and boosting industry segments, respectively. The statutory language in CAA section 136(f)(l)-(3) specifically designates that the waste emissions thresholds be calculated as such for "(1) Petroleum and natural gas production..... -- (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…. (2) Nonproduction petroleum and natural gas systems.-- 0.05 percent of the natural gas sent to sale from or through such facility…. (3) Natural gas transmission—0.11 percent of the natural gas sent to sale from or through such facility." As such, the EPA is finalizing the natural gas to represent the quantity of "natural gas sent to sale" as proposed.

Comment 10: Commenter 0196 argued that under the current WEC rule, there is no relief for inevitable production declines of legacy wells. Commenter 0196 explained that emissions remain relatively stable while production declines, therefore the threshold values of 0.20 percent and 0.05 percent of natural gas and liquid sent to sale (for production and gathering and boosting, respectively) make the operations of legacy wells more cost-prohibitive over time.

Response 10: The EPA acknowledges the commenters' concern regarding the inevitable production declines of legacy wells while emissions generally remain relatively stable; however, the EPA is implementing the methane intensities set by Congress in CAA section 136(f). In acknowledgement of this scenario, Congress created an incentive for plugging and permanently shutting wells by including an exemption from the WEC in CAA section 136(f)(7). The EPA refers the commenter to section II.D.3. of the preamble to the final rule for discussion of the plugged well exemption.

Comment 11: Commenter 0196 argued that the 0.20 percent methane intensity for onshore and offshore petroleum and natural gas production is too low. Commenter 0196 stated that the 0.20 percent factor likely derived from MiQ standards, which is an international group with various high-producing companies and environmental groups. Commenter 0196 supported the usage of a 2.0 percent or higher methane intensity factor in lieu of 0.20 percent.

Response 11: The EPA does not concur with the request to change the proposed 0.20 percent methane intensity for onshore and offshore petroleum and natural gas production. The 0.20 percent industry segment-specific methane intensity was established by Congress in CAA section 136(f)(1)(a), and the EPA does not have the statutory authority to revise this threshold, as

requested by commenters. Furthermore, since the EPA did not calculate or establish these statutory thresholds, the EPA cannot provide the rationale for how Congress derived these methane intensity metrics. Consistent with the statutory provisions, the EPA is finalizing the methane intensities for onshore and offshore petroleum and natural gas production as proposed.

Comment 12: Commenters (0212, 0240, 0282, 0297, 0300) expressed concern that the methane intensity of 0.05percent for the gathering and boosting industry segment is very low and asked for additional information as to the basis of that decision.

Commenters (0212, 0240) argued that the intensity factor was not mentioned in the IRA MERP or proposed WEC rule that explains the decision, and it is vastly lower than the 0.20 percent and 0.11 percent methane intensity factors for onshore production and transmission and processing, respectively. Commenter 0212 stated that the gathering and boosting methane intensity factor is based on miles of pipe and does not reflect control measures or emissions data that could demonstrate different emissions profiles. Commenter 0282 argued that it is unachievable for gathering and boosting facility emissions to be below the threshold because many of these facilities are remote and do not have economically-feasible and/or operationally viable ways to reduce methane emissions, such as electrification and compressed air systems.

Commenter 0240 further expressed that the subpart W amendments that include additional emission sources, such as methane slip for compressor drivers and pipelines, will result in every single gathering and boosting operator to be over the 0.05 percent threshold. Commenter 0240 stated that the threshold should incorporate the EPA's projected subpart W amendments and be consistent with the 0.20 percent threshold established for the Onshore Production segment.

Commenter 0297 stated that proposed rule arbitrarily extends the facility definition in subpart W in a way that would result in aggregating production facilities and gathering and boosting systems as a single facility. The commenter further stated that the inclusion of an operator's gathering and boosting system effectively applies the WEC charge twice to the same molecule and producer, as it is continually taxed as product moves from production to gathering to processing and beyond.

Response 12: The EPA does not concur with the request to change the proposed 0.05 percent methane intensity for the gathering and boosting industry segment to 0.20 percent. The 0.05 percent industry segment-specific methane intensity was established by Congress in CAA section 136(f)(2) for nonproduction petroleum and natural gas systems, and a separate metric of 0.20 percent was established for the petroleum and natural gas production industry segment. Since Congress set these thresholds, the EPA does not have the statutory authority to revise these thresholds, as requested by commenters.

Regarding comment that the EPA proposed to define a facility in the proposed rule in a way that would aggregate production facilities and gathering and boosting systems as a single facility, the EPA directs the commenter to response 4 of chapter 1.1 of this response to comment document. As discussed in that response, the provision concerning facilities that operate under multiple industry segments that are a single facility under subpart W, and thus a single WEC applicable

facility, would not be relevant to the onshore petroleum and natural gas production (Onshore Production) and onshore petroleum and natural gas gathering and boosting (G&B) industry segments. Regarding the claim that applying the WEC to the G&B segment results in charging the same molecule from the same producer twice, the WEC is assessed at the WEC applicable facility level, using emissions and throughputs attributable to the individual facility, as directed by CAA section 136. To the extent that this results in multiple charges for excess waste emission for throughput of the same molecules of natural gas, it is consistent with what Congress required in CAA section 136 in directing the EPA to assess methane fees for waste emissions in each named industry segment in the value chain.

Regarding the commenter's discussion of revising the waste emissions threshold to reflect subpart W amendments, the EPA reiterates (without reopening the subpart W final rule) that the inclusion of additional reported sources, such as methane slip, has the intended effect of ensuring that reporting accurately reflects total methane and waste emissions for all O&G facilities as required by CAA section 136(h). We further note that CAA section 136 established both the segments-specific waste emission thresholds and gave direction to revise subpart W to ensure that reporting accurately reflects total methane and waste emissions; thus, the EPA's approach is reasonable and consistent with Congress directing changes by the EPA to subpart W that could alter how facilities' emissions compared to the established thresholds, but electing not to provide the EPA discretion on those thresholds or the ability to revise them. The comments on which sources should be included within subpart W are out of scope for this final rule; without reopening subpart W, the EPA notes the statutory language of CAA section 136(f)(2) reflects that the reported metric tons of methane emissions should represent all subpart W reported methane emissions.

Comment 13: Commenter 0290 recommended the revision to the segment throughput parameter for underground natural gas storage facilities to include both injections and withdrawals because that total is indicative of the natural gas volume passing through the facility and represents the total quantity of natural gas transported through the facility.

Commenter 0290 requests the following revision for calculating the facility waste emissions threshold for equation B-4.

$Q_{ng,Tran}$ = 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 40 CFR 98.236(aa)(4)(i) of this chapter, in Mscf. For underground natural gas storage, you must use the sum of the quantities reported pursuant to 40 CFR 98.236(aa)(5)(i) and 40 CFR 98.236(aa)(5)(ii) of this chapter, in Mscf. For onshore natural gas transmission pipeline, you must use the quantity reported pursuant to 40 CFR 98.236(aa)(11)(iv) of this chapter, in Mscf.

Response 13: The EPA does not concur with the commenter's request to revise equation B-4 to change $Q_{ng,Tran}$ to represent the sum of the quantities reported pursuant to 40 CFR 98.236(aa)(5)(i) and 40 CFR 98.236(aa)(5)(ii) for underground natural gas storage facilities. The

statutory text of CAA section 136(f)(3) reflects that the charge for underground natural gas storage be imposed and collected 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." The EPA interprets that the quantity of natural gas sent to sale from or through an underground natural gas storage facility is best represented by 40 CFR 98.236(aa)(5)(ii), which represents the quantity of gas withdrawn from storage in the calendar year, as the quantity that is withdrawn from an underground natural gas storage facility is the quantity that is ultimately sent to sale. Therefore, the EPA disagrees with the suggestion that the natural gas sent to sale should include both quantities of injection and withdrawal. The EPA did not change $Q_{ng,Tran}$ from proposal and is finalizing equation B-4 as proposed.

Comment 14: Commenter 0906 stated that the EPA should revise the proposed throughput metric for calculating onshore natural gas transmission pipeline methane intensity. As proposed, Commenter 0906 argued that the input for throughput data in Equation B-4 will overstate the methane intensity for a number of onshore natural gas transmission pipelines.

Commenter 0906 referred to CAA section 136(f)(3) that describes throughput as the amount of natural gas "sent to sale from or through" a facility. In Equation B-4, the term $Q_{ng,Tran}$ represents throughput, which the Proposed Rule describes as "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." Per the EPA, Commenter 0906 stated, onshore natural gas transmission pipelines are instructed to use "the quantity reported pursuant to 40 CFR 98.236(aa)(11)(iv) of this chapter, in Mscf" as the input for throughput. In the rulemaking to revise subpart W, the EPA proposed to make the following addition to 40 CFR 98.236(aa)(11)(iv) and revised it to "The quantity of natural gas transported through the facility and transferred to third parties such as LDCs or other transmission pipelines, in thousand standard cubic feet." However, Commenter 0906 argued that for a company that also owns the downstream entity that will receive the natural gas throughput "sent to sale from or through," the language makes 40 CFR 98.236(aa)(11)(iv) an incomplete metric for these pipeline's throughput. Commenter 0906 states that the current definition of 40 CFR 98.236(aa)(11)(iv) would have the unintended effect of increasing the pipeline's methane intensity because Equation B-6 will underestimate the pipeline's natural gas throughput while accurately reporting a pipeline's subpart W emissions, and it will in turn increase the WEC obligation for these facilities.

Commenter 0906 proposed that the EPA address the above by either amending subpart W at 40 CFR 98.236(aa)(11) to require onshore natural gas transmission pipelines to report an additional data element, such as "the quantity of natural gas transported through the facility and transferred to entities other than third parties, in thousand standard cubic feet" or "the quantity of natural gas transported through the facility and sent to sale, in thousand standard cubic feet." Commenter 0906 stated that in a similar fashion that the EPA changed some confidentiality determinations for subpart W data elements as part of this WEC Rulemaking, the Agency is willing to make changes to subpart W and this change is similarly required for the proper functioning of the WEC program.

In addition, Commenter 0906 stated that the EPA has authority under CAA section 136(f) to select throughput inputs from data sources other than subpart W, as the statute is clear that only emissions data must come from subpart W. Therefore, the EPA could consider using the U.S. Energy Information Administration (EIA) reporting, such as form EIA-176, which summarizes all natural gas transported through a transmission pipeline.

Response 14: To respond to these comments, without reopening the subpart W provisions, the EPA reviewed the throughput reporting element for transmission pipeline companies in subpart W. During our review, we noted that there are three definitions in 40 CFR 98.238 which are important to consider with respect to how transmission pipeline facilities must report to subpart W including: Facility with respect to the onshore natural gas transmission pipeline segment, Transmission pipeline, and Onshore natural gas transmission pipeline owner or operator. The term facility with respect to the onshore natural gas transmission pipeline segment in 40 CFR 98.238, "means the total U.S. mileage of natural gas transmission pipelines, as defined in this section, owned and operated by an onshore natural gas transmission pipeline owner or operator as defined in this section. The facility does not include pipelines that are part of any other industry segment defined in this subpart." The term transmission pipeline as referenced in the facility definition is defined in 40 CFR 98.238 as, "…a Federal Energy Regulatory Commission rate-regulated Interstate pipeline, a state rate-regulated Intrastate pipeline, or a pipeline that falls under the "Hinshaw Exemption" as referenced in section 1(c) of the Natural Gas Act, 15 U.S.C. 717-717 (w)(1994)." The term owner or operator of a transmission pipeline also as referenced in the facility definition is defined in 40 CFR 98.238 as, "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." By consequence of how this collection of terms for transmission pipeline have been defined, transmission pipeline facilities and LDC facilities are required by definition to report separately to subpart W regardless of ownership. With this in mind, contextually the term "third party" was not intended to have a contractual association, but rather to indicate that the transfer of gas to a facility other than the transmission pipeline facility as it is defined in subpart W is considered a transfer to a third party which can include LDCs or other transmission pipeline companies. Thus, in this rulemaking we are finalizing as proposed the part 99 provision for the use of the throughput in 40 CFR 98.236(aa)(11)(iv) in the WEC calculations for transmission pipeline companies.

We also considered the suggestion of utilizing for part 99 purposes the data reported to other agencies for the throughput (*e.g.*, EIA). However, we note that the EIA data does not typically become publicly available until September, which is after the WEC filing due date. The data is

also not linked to the GHGRP subpart W reporting facility IDs and would require manual cross-walking and additional verification making it less efficient and more prone to error than utilizing verified subpart W throughput data. Finally, the clarification to respond to the comment regarding the existing subpart W provisions provided in the previous paragraph of this response, regarding the throughput reporting element for transmission pipe, shows that there is not a need to either amend the subpart W reporting element or use an alternative data source.

Comment 15: Commenter 0324 expressed support for the Methane Emissions Reduction Program's waste emissions charge, which they believe will help hold oil and gas operators accountable and encourage the adoption of emissions reduction technologies, such as advanced monitoring techniques and zero-emitting process controllers. Commenter 0324 stated that reducing methane is the fastest, most cost-effective way to slow global warming, and it is imperative to address the issue now in a swift manner.

Commenter 0324 stated that they believe the current rule does not go far enough and the methane thresholds are too high. Commenter 0324 proposed the adoption of a threshold of 400 tons per year across all natural gas facilities for each segment of the natural gas supply chain. Commenter 0324 also suggested the implementation of a penalty, such as $1,000 per methane ton per year, for instances of facilities that have falsified their data and this penalty should be incorporated into the WEC obligation.

Response 15: The EPA acknowledges the commenter's general support for the WEC program. With respect to revising the applicability threshold from 25,000 metric tons of carbon dioxide equivalent of greenhouse gases emitted per year to 400 tons of methane, the EPA notes that the threshold is established in the statutory text of CAA section 136(c), therefore the EPA does not have the statutory authority to revise these thresholds, as requested by commenters. The EPA will be finalizing the applicable waste emissions threshold as proposed.

In reference to the implementation of a penalty for falsified information, the EPA refers the commenter to section III.E.2. of the preamble to the final rule for compliance and enforcement actions.

2.2 Facility Methane Emissions

Comment 1: Commenter 0273 requested that the EPA exclude combustion emissions from the WEC calculation when evaluating facility waste emissions. Commenter 0273 argued that post-combustion methane emissions from external and internal combustion sources are not a "waste" emission, but rather the byproduct of an efficient and productive use. Commenter 0273 further stated that unlike raw gas methane emissions associated with leaks and venting, combustion emissions are unable to be recovered. Commenter 0273 proposed that combustion emissions still be included under subpart C but not considered for a facility's waste emissions calculation.

Response 1: Comments regarding the subpart under which combustion emissions are reported in part 98 are out of scope for this rulemaking. To respond to this comment, without reopening the subpart W provisions, we refer the commenter to section III.S.3. of the preamble to the final rule

"Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems" (89 FR 42062, published May 14, 2024) for explanation regarding why in that rulemaking the EPA did not amend existing provisions that specify the subparts under which combustion emissions are reported. With respect to comment regarding the difference in meaning between the terms "total [methane] emissions", "waste emissions", and "waste gas" in the context of subpart W, to respond to this comment without reopening the subpart W provisions, we refer the commenter to section 20.4 of the "Summary of Public Comments and Responses for 2024 Final Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems under the Greenhouse Gas Reporting Rule" available at https://www.regulations.gov/document/EPA-HQ-OAR-2023-0234-0456. See also the responses to comments in section 1.3 and section 17.6 of this response to comment document.

With respect to comment that the EPA should exclude combustion emissions reported under subpart W for purposes of the WEC program, without amendment to reporting requirements under subparts C or W, the EPA disagrees. Section 136(e)(1) of the CAA bases the charge amount under the WEC on "the number of metric tons of methane emissions reported pursuant to subpart W of part 98."

2.3 Netting

Comment 1: Commenter 0276 stated that the EPA's explanation regarding the netting of WEC applicable facilities creates significant confusion. Commenter 0276 argued that netting should always be at the option and discretion of the operator and no forced netting should occur. In contrast, operators should be able to elect when to net and be able to net through parent companies.

Response 1: The EPA acknowledges the commenter's concerns that netting should be optional and at the discretion of the operator. This is consistent with the statutory language of CAA section 136(f)(4), stating 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)." The EPA concurs with the commenter insofar as that netting is optional, as the statutory language states "shall allow for," which the EPA does not consider to be a statutory requirement on the WEC obligated party. The EPA refers the commenter to section II.B.2. of the preamble to the final rule for a discussion of the EPA's final application of the netting provisions of CAA section 136(f)(4), including the EPA's interpretation of "common ownership or control" to apply at the parent company level. For comments regarding the scope of what facilities may be included in the netting analysis, the EPA refers the commenters to section II.B.2. of the preamble to the final rule for the rationale regarding the EPA's interpretation that only WEC applicable facilities are eligible to transfer negative net WEC emissions. See also the responses to comments in section 3.2 of this document.

Comment 2: Commenter 0906 proposed that the EPA should remove its "four groups" terminology from the preamble. Commenter 0906 expressed concern that the "four groups" of

applicable segments could be misinterpreted as an attempt to limit the statutory flexibility of the netting mechanism under Section 136(f)(4). Commenter 0906 stated that while it is true that Section 136(f) effectively creates four groups of waste emissions thresholds, the "group" unit has no statutory or regulatory importance to the operation of the WEC program. Commenter 0906 argued that the segments in each group are no more interrelated for purposes of the WEC analysis than any of the other segments.

Commenter 0906 stated that the EPA's discussion of the "four groups" gives the impression that the EPA may be trying to limit the netting option such that it would only apply within each such "group," which would be contrary to the statue that allows netting "within and across all applicable segments identified in subsection (d)." Commenter 0906 recommended that the EPA remove this concept from the preamble to avoid confusion.

Response 2: The EPA disagrees with the commenter's suggestion to remove discussion of the four groups of industry segments to which a methane intensity threshold is assigned at CAA section 136(f)(4), but confirms as correct the commenter's interpretation that in the final rule the netting of emissions is permitted within and across all applicable industry segments regardless of which methane intensity threshold applies to a WEC applicable facility. The EPA refers to the statutory language of CAA section 136(f)(4), stating 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)." The EPA interprets the inclusion of "within and across all applicable segments" as those included in CAA section 136(d) and did not propose and is not including such restrictions among these segments.

The EPA refers the commenter to section II.B. of the preamble to the final rule for a discussion of the netting provisions of CAA section 136(f)(4), including the EPA's interpretation of "common ownership or control" to apply at the parent company level. For comments regarding the scope of what facilities may be included in the netting analysis, the EPA refers the commenters to section II.B. of the preamble to the final rule for the rationale regarding the EPA's interpretation that only WEC applicable facilities are eligible to transfer negative net WEC emissions. See also the responses to comments in section 3.2 of this response to comment document.

Comment 3: Commenter 0281 stated that it is known that methane or other emissions emitted from a facility, or facilities do not remain local and that if an entity is involved in an industry where emissions are likely or possible, their total emissions, across all basins and locales, provides the clearest picture of their total emissions. The commenter noted that their members range from one or two wells up to thousands of wells across assets in multiple states and various basins. As responsible operators, they are looking across their asset bases to find efficiencies and opportunities to reduce emissions. The commenter stated that they were not supportive of a rule that disincentivizes operators from pursuing emissions reductions because the WEC netting provisions would effectively penalize them.

Response 3: The EPA acknowledges the concerns raised by the commenter. The EPA refers the commenter to section II.B. of the preamble to the final rule for a discussion of the EPA's final application of the netting provisions of CAA section 136(f)(4), including the EPA's interpretation of "common ownership or control" to apply at the parent company level. The EPA has finalized provisions that increase access to the netting provisions by allowing netting of emissions across facilities that are under common ownership or control of the same parent company. For comments regarding the scope of what facilities may be included in netting, the EPA refers the commenters to section II.B. of the preamble to the final rule for the rationale regarding the EPA's interpretation that only WEC applicable facilities are eligible to transfer negative net WEC emissions. See also the responses to comments in section 3.2 of this response to comment document.

2.4 Waste Emissions Charge Calculation

Comment 1: Commenter 0327 stated that the EPA has appropriately proposed to assess the WEC on tons of methane emissions exceeding the statutory thresholds using a clear method for making the calculation.

Response 1: The EPA acknowledges the commenter's support for the proposed waste emissions charge calculation. The EPA is finalizing the waste emissions charge calculation as proposed.

Comment 2: Commenter 0284 generally agrees that the formulas the EPA proposed to be added in 40 CFR 99.20 - 99.23 will accurately calculate the total obligation each company will owe in Methane Charges, with one important caveat: netting on a parent company-wide basis is required. Setting aside that netting must occur on a parent company-wide basis, these proposed formulas accurately implement the concept of converting an intensity-based emissions threshold into a WEC chargeable amount based on a tonnage of emissions. However, the commenter suggested a revision to equation B-4 to where the applicable emissions threshold is correctly stated as 0.0011 (*i.e.*, 0.11 percent). However, in the parameter description for this equation, 0.0005 (*i.e.*, 0.05 percent) is listed. The error in the parameter description should be corrected to 0.0011, consistent with 42 U.S.C. 7436(f)(3).

Response 2: The EPA acknowledges the commenter's support for equations B-1 through B-4 and thanks them for the identification of the inconsistency of the parameter description in Equation B-4. Equation B-4 has been corrected accordingly in the final rule, and the remainder of the equations are finalized as proposed.

After review and consideration of the comments raised during the comment period regarding the most appropriate level to allow for the transfer of negative quantities of net WEC emissions to occur, and as discussed in the preamble to the final rule in section II.C. and in the response to Comment 3 of this section, we have determined to finalize the rule using an approach that allows for the transfer of negative quantities of net WEC emissions to occur across WEC obligated parties that are under common ownership or control of the same parent company. The EPA refers the commenters to section II.B. of the preamble to the final rule for the rationale behind this

decision. The EPA also notes that under the final rule, the owner or operator is the WEC obligated party and is responsible for the WEC filing and payment of WEC obligations.

Comment 3: Commenters (0180, 0221) stated that based upon the proposed formulas for calculation of WEC, it appears more accurate to describe the waste emissions charge as being based on a dollar amounts per metric ton or fraction thereof, rather than solely per metric ton of methane.

Response 3: The EPA acknowledges the commenter's request to define the inputs and outputs for the calculation of the waste emissions charge. With respect to comment that the WEC calculation is based upon metric tons of methane or fraction thereof, the EPA confirms that the computation of Equations B-1 through B-8 may include as inputs, and outputs, fractional tons of methane emissions. Additionally, the EPA has finalized at equation B-8 of 40 CFR 99.2 that the net WEC emissions for a WEC obligated party will be rounded to the nearest 0.01 metric ton of methane.

2.5 G&B and Processing Facilities with Zero Reported Throughput

Comment 1: Commenters (0170, 0292) supported the proposed approach to consider all reported emissions for facilities that report zero throughput as exceeding the waste emissions threshold.

Commenter 0287 noted that fractionation plants that only handle natural gas liquids (NGLs) would not have any natural gas throughput reported to subpart W. The commenter stated that rather than concluding that the threshold is zero, a better interpretation of the law is that there is no applicable emissions threshold because there is no WEC applicable facility, *i.e.*, that Congress did not intend to apply a threshold based on fuels being sent to sale to facilities that do not send fuels to sale. The commenter stated that emissions from these facilities are primarily from fuel combustion.

Commenter 0287 stated that as an alternative pathway for fractionation plants, NGL throughput could be converted to a natural gas throughput equivalent for calculating the waste emissions threshold. The commenter further stated that this issue extends beyond production facilities, and it is possible that Congress did not contemplate every operational scenario under which a facility would not send natural gas to sale. The commenter suggested that the EPA could acknowledge this congressional intent and establish an appropriate threshold for facilities that do not produce oil or send natural gas to sale, and that if the EPA does not believe it can establish such a threshold, then the EPA should conclude the WEC doesn't apply to these facilities.

Commenter 0294 stated that the proposed approach (considering any methane emissions as exceeding the waste emissions threshold) is more closely aligned with the language and intent of the IRA than the alternative. The commenter stated that the alternative conflicts with the intent of the IRA to "impose and collect a charge on methane emissions that exceed an applicable waste emissions threshold" for all WEC applicable facilities under Subpart W, as no threshold would be applied to these facilities and that mandating that no reported emissions are subject to the

WEC will disincentivize operators to reduce overall methane emissions or reach regulatory compliance per the regulatory compliance exemption. The commenter recommended that the EPA develop an appropriate throughput metric for these facilities to encourage accurate reporting and motivate methane reductions.

Commenters (0298, 0905) stated that a plain reading of the text at CAA section 136(f)(2) conveys that gathering and boosting facilities that do not send gas to sale are not contemplated by the statute and that an appropriate and statutorily supportable approach is to consider all methane emissions from such facilities to be below the waste emissions threshold. Commenter 0905 stated that applying a waste emissions threshold of zero is both punitive to well designed and efficient gathering and boosting facilities not engaged in gas sales and in plain contradiction of the enabling statutory language.

Response 1: The EPA acknowledges the concerns raised by the commenters. After continued review of the statutory text and consideration of comments received on the treatment of these facilities, the EPA is finalizing a determination that these facilities do not generate WEC applicable emissions, and therefore will not be subject to charge. The EPA refers the commenters to section II.C.6. of the preamble to the final rule for the rationale regarding the EPA's interpretation of whether gathering and boosting and processing facilities with zero reported throughput are subject to the waste emissions charge.

3 Common Ownership or Control for Netting of Emissions

Comment 1: Commenter 0937 offered an alternative reading of CAA section 136(f)(4). The commenter suggested that Congress did not mean for the netting provision to zero out an entity's WEC obligation, but rather only reduce its total obligation. The commenter proposed netting at a level of no greater than a 1:2 basis, rather than the 1:1 in the proposal, retaining an incentive to continue to find mitigation measures.

Response 1: The EPA disagrees with this comment. The commenter is correct that the statute does not specify the offset for netting. The EPA recognizes that other air programs (*e.g.*, nonattainment new source review) include offsets which are greater than 1:1, meaning that more than one ton of reduction is needed for each one-ton credit for netting purposes received. In all cases in which the EPA employs an offset greater than 1:1, however, these offsets are statutorily mandated and are linked to the severity of nonattainment status. The commenter did not provide sufficient rationale as to why a 1:2 ratio for netting is appropriate, or how that might impact methane emissions reductions across the industry. Moreover, the best reading of CAA section 136 supports a 1:1 netting approach. Therefore, the EPA is not making this change in the final rule.

3.1 Common Ownership or Control

Comment 1: Several commenters supported the EPA's proposed approach to limit netting to the owner or operator level. Commenters (0266, 0292, 0294, 0327, 0335, 0703, 0937)

supported netting of methane emissions at the owner or operator level only, in lieu of the parent company level.

Commenters (0292, 0294, 0335, 0703) provided policy reasons to limit netting to the owner or operator level. These commenters urged the EPA to consider further limiting the scope of netting so as to minimize the likelihood of reductions in one state enabling excess emission in another. Commenter 0937 acknowledged that allowing netting at the parent company level would be within a permissive reading of the statutory language, but that to broaden netting to the parent corporation level may reduce any incentive for a facility or grouping of facilities to mitigate their methane emissions. Commenter 0327 noted that Congress was aware and understood subpart W when it enacted WEC, and that subpart W refers to the owner or operator, not the parent company. The commenter stated that Congress directed the EPA to make changes to subpart W to improve reporting methodologies and not to the EPA's approach to common ownership or control; therefore, Congress did not intend for netting to occur at the parent company level.

Commenter 0294 stated that the EPA should create clear guidelines to guard against potential manipulation and ensure netting is conducted uniformly. Commenter 0294 noted that, as mentioned in 40 CFR 98.4(i)(3), information regarding the "owner or operator" of a facility is not currently available to the public. To boost transparency and accountability, the EPA should ensure owner/operator information is readily available, so the public can easily track how final WEC fees are estimated and netted.

Response 1: The EPA acknowledges the commenters' support for the proposed rule approach. However, after review of all comments received and further review of the statutory language, the EPA has finalized an approach that allows for the transfer of negative net WEC emissions across WEC obligated parties that are under common ownership or control of the same parent company. The EPA refers the commenters to section II.B.1. of the preamble to the final rule for the rationale behind this decision. The EPA also notes that under the final rule, the owner or operator is the WEC obligated party and is responsible for the WEC filing and payment of WEC obligations.

Regarding the comments to assure uniform netting and transparency, the EPA is committed to clear regulatory guidelines and transparency. We refer the commenter to 40 CFR 99.22 and 40 CFR 99.23 of the final rule for guidelines on the transfer of negative net WEC emissions. The EPA makes information such as parent company ownership and methane emissions publicly available currently through its website at https://www.epa.gov/ghgreporting, and upon implementation, will include owner/operator information publicly available for transparency as well. Regarding comments related to limiting netting within a given state, the EPA notes that there are other provisions, such as the Regulatory Compliance Exemption, which provide incentive to facilities to minimize local impacts from methane emissions.

Comment 2: Commenter 0299 stated that the EPA created a new category, WEC applicable facilities, that is not supported by any text found in CAA section 136 and would exclude the lowest-emitting facilities from the netting calculation. Commenter 0287 shared a similar concern

stating that the proposal excludes certain subpart W facilities from netting, in conflict with the statute.

Response 2: The EPA disagrees with the commenters that the definition of WEC applicable facility is not supported by text found in CAA section 136. We refer the commenter to sections II.A.1. and II.B.2. of the preamble to the final rule for information on the definition of WEC applicable facility and facilities eligible for netting of emissions, including the exclusion of facilities reporting 25,000 or fewer metric tons of CO_2e to subpart W of Part 98 and those not required to report to the GHGRP.

Comment 3: Commenter 0327 noted that netting at the parent company level would be difficult to administer. They believed Congress required the WEC to be based on subpart W reporting. To collect fees from a parent company may require evaluation of corporate structure on a case-by-case basis. The commenter was concerned companies may strategically restructure to minimize emissions subject to WEC; and when owners/operators have multiple parent companies, the EPA would have to decide who could use the emissions for netting purposes.

Response 3: The EPA acknowledges the concerns raised by the commenter regarding difficulty in administering the WEC program at the parent company level. However, after review of all comments received and further review of the statutory language, the EPA has finalized an approach that allows for the transfer of negative net WEC emissions across WEC obligated parties that are under common ownership or control of the same parent company. The EPA refers the commenters to section II.B. of the preamble to the final rule for the rationale behind this decision. Additionally, section II.C.4. of the preamble to the final rule explains the process governing the transfer of negative net WEC emissions across WEC obligated parties. The first step in the finalized netting process is the calculation of metric tons of methane emissions equal to, below, or exceeding the waste emissions threshold, or WEC applicable emissions, for each WEC applicable facility as specified in 40 CFR 99.21. The next step is summing WEC applicable emissions across all of a WEC obligated party's WEC applicable facilities. This calculation, finalized at 40 CFR 99.22(a) using equation B-8, yields net WEC applicable emissions for each WEC obligated party. The final step involves optional netting of emissions across WEC obligated parties with the same parent company. In this process, WEC obligated parties with net WEC emissions below the waste emission thresholds (as calculated using Equation B-8) may transfer those negative quantities of net WEC emissions to WEC obligated parties (with net positive WEC emissions – those emissions above the waste emission thresholds) with the same parent company. After the negative net WEC emissions have been transferred as determined by each of the WEC obligated parties with a common parent company, each WEC obligated party's total methane emissions above or below the waste emissions threshold is finalized. This final amount of metric tons methane is used to determine if a WEC obligated party owes a WEC obligation for the given year. The EPA also notes that under the final rule, the owner or operator is the WEC obligated party and is responsible for the WEC filing and payment of WEC obligations.

3.1.1 Utilize Parent Company

Comment 1: Several commenters (0193, 0199, 0202, 0208, 0210, 0220, 0230, 0239, 0267, 0268, 0271, 0273, 0274, 0280, 0282, 0284, 0287, 0290, 0291, 0298, 0299, 0905) supported the alternate proposal that the EPA should allow netting at the parent company level. Commenter 0284 asserted the EPA used a strained interpretation of CAA section 136(f)(4) that relies on an irrelevant provision in 40 CFR Part 98 without consideration to other provisions of Part 98 which refer to parent company to limit netting at the owner and/or operator level. Commenter 0284 stated that the provision of Part 98 that the EPA relied on (40 CFR 98.4(i)(3)) does not have bearing on common ownership or control, but simply requirements for certification of the GHG report. Commenter 0284 suggested 40 CFR 98.3(c)(11) is more directly applicable because it provides for general reporting requirements, which require the parent company to be reported. Commenter 0284 further noted that the phrase "common ownership or control" is used in the definition section, where it is followed by a qualifying phrase "by a gathering and boosting system owner or operator" (40 CFR 98.328) therefore suggesting a broader meaning for the term "common ownership or control."

Commenter 0284 disagreed with the EPA's claim that CAA section 136(h) use of "owners and operators" indicated Congressional intent to limit the meaning under CAA section 136(f)(4) and should not be relied on to support its preferred interpretation. Commenter 0284 expressed that "common ownership or control" has a distinct legal meaning that the EPA had not considered in the proposal and suggested that case law supported the interpretation that it should mean or relate to parent companies. Commenter 0284 identified several cases including:

- *United States v. Bestfoods*, 524 U.S. 51, 62 (1998) where SCOTUS held that a parent corporation is so-called because of *control through ownership of another corporation's stock;*
- *Lusk v Foxmeyer Health Corp*., and the Fifth Circuit held that common management and ownership are ordinary aspects of parent-subsidiary relationship.
- *Cook v Arrowsmith Shelburne, Inc.,* the Second Circuit employed a four-part test developed by the Fifth Circuit to address the question of parent-subsidiary liability. Commenter 0284 stated the case held that parent-subsidiary relationship cannot be determined without the presence of "(l) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control."

Commenter 0284 also stated that the IRS has found common ownership or control to exist if there is greater than 50percent ownership by the same related party interest *(LB&I Concept Unit Knowledge Base International (October 23, 2017)* and further defines "controlled group of corporations" to mean a parent-subsidiary controlled group 26 U.S.C. 1563 (a)(l)(A). Commenter 0284 further supported their interpretation with state environmental regulations (Colorado, New Mexico, and Michigan) allowing emissions averaging at the parent-company level. Commenter 0284 concluded that in order to implement netting at the parent company level, the EPA simply needed to broaden the set of facilities that can be netted together.

Commenter 0290 also supported the use of the parent company as the basis for emissions netting. Their review of GHGRP reports found that relying on part 98 definitions of owner and operator

often established boundaries between segments, which would preclude netting as intended by the Act. Commenter 0290 recommended that the WEC rule retain the proposed definition for "WEC applicable facility" and that the EPA should institute a separate determination for identifying which facilities to include in the netting calculation. Commenter 0290 suggested this could be addressed by including methane emissions from all their GHGRP reporting facilities in the WEC program strictly for the purpose of conducting the netting calculation. Other commenters (0193, 0199, 0202, 0208, 0267, 0268, 0230) noted that naming conventions or legacy corporate names in subpart W designated representative reporting should not limit aggregation of WEC applicable facilities into a single WEC filing. Commenter 0239 added that netting at the parent company level would be the best way to ensure that the parties who are taking proactive steps to reduce methane emissions are appropriately rewarded under the WEC program.

Commenter 0905 noted that the GHGRP and subpart W were devised solely as an information gathering program and therefore, identification of the relevant owner/operator for reporting purposes was geared toward ease of information gathering and facilitating the collection of relevant and accurate information. In contrast, CAA section 136 is a fee program that has a wholly different purpose and effect than the GHGRP and subpart W (*e.g.*, creating an incentive for the reduction of methane emissions). Commenter 0905 contended that the EPA has an obligation to take a fresh look at the term owner/operator under CAA section 136 to make sure the fee program regulations comport with the purposes of the program. From that perspective, allowing netting at the parent company level is appropriate because it would fully implement Congress's clear purpose of mitigating the impact of the fee program.

Commenters (0210, 0274) contended that without parent company netting, emissions reduction opportunities would be assessed separately for each legal entity considered to be an "owner or operator." Commenters (0210, 0274) suggested that this approach could prioritize projects that achieve smaller net emissions reductions, compared to projects with the potential for greater emissions reductions that may be achievable by netting across entities at a parent company level. Commenter 0210 also stated that utilizing a parent company for netting purposes would streamline the number of organizations submitting under WEC, thereby reducing administrative burden to the EPA, enabling organizations to readily identify WEC obligations and allowing external stakeholders to easily discern which organizations have achieved the most significant emissions reductions (or, conversely, owe the largest WEC obligation).

Commenters (0202, 0280, 0282) suggested that WEC applicable facilities not be required to aggregate under the parent company but be provided the option to net in a manner that is most effective for their operations. Commenter 0299 suggested that this narrow approach would penalize companies for following ordinary business practices with respect to their corporate structures. Commenters (0271, 0274) offered a definition of "parent company" to mean the highest-level company based in the United States with an ownership interest in the WEC applicable facility.

Commenter 0284 reminded the EPA that emissions averaging and trading are policy tools that achieve the same level of emissions reductions at lower costs and the broader coverage a trading market has, the more efficient it tends to be.

Commenters (0276, 0284, 0289) requested that the EPA clarify that a parent company may function as a common WEC obligated party for the WEC applicable facilities of its subsidiaries and may choose to include facilities that fall under the 25,000 tons CO_2e applicability threshold. Commenter 0289 noted that the EPA even collects parent company information within GHGRP. Commenters (0276, 0284) supported their request by stating that across many of the various industry segments, there will be different operators for each one, all under the same parent and company umbrella. Therefore, limiting netting to the same operator will have an effect of significantly reducing or eliminating the ability for operators to use the intended netting provision.

Commenter 0276 added that as companies acquire assets, the names of the legacy operating companies are often retained even though the acquiring company makes capital allocation decisions, consolidates for tax purposes, etc., -- the daily operations are left to the subsidiary. Sometimes, there may be a wholly or partially owned subsidiary formed. Commenters suggested that operators be encouraged to find reductions in areas wherever they can, even where the WEC applicable facility is below the WEC threshold. They suggested that by allowing operators to have the ability to be creative, including where assets include both onshore and gathering and boosting operations, the most reductions may be achieved and by restricting netting may inadvertently set a floor for emissions reductions by disincentivizing reductions.

Commenters (0281, 0283, 0905) supported the parent company approach to netting. The commenters stated that the EPA should make the final rule clear that it is not restricting netting availability to situations where any particular type of parent company is a common owner of multiple facility owners or operators, but instead to allow “common ownership or control” in broad terms, and the EPA should follow Congress’s intent by allowing for netting between facilities that are under common ownership, regardless of the particular details of the structure of common ownership in any given situation.

Commenters (0281, 0283, 0905) disagreed with the EPA's reasoning to support the proposal to limit netting at the owner and/or operator level. The commenters (0281, 0283, 0905) suggested that each subsection of CAA section 136 should be taken independent of one another, and that Congress would have referenced subpart W in the netting program under CAA section 136(f)(4) if it intended to utilize the preexisting reporting program regime as basis of the netting program. Since, it did not, the commenters believed Congress intended for the netting program to be a brand-new concept, utilizing a different approach to common ownership or control. Commenter 0283 further noted that there is no definition for "common ownership or control" in subpart W, instead the term "common ownership or common control" is used three times in subpart W. The commenter 0283 stated in subpart W the term is germane to the determination of ownership of individual equipment, not ownership of multiple facilities, providing limited use for netting. The

commenter recommended the creation of a new provision with an appropriate interpretation in line with its purpose, not just a mechanical adoption of an approach from another context. They added that CAA section 136(f)(4) does not require common ownership or control must be by a single "owner or operator" as in 40 CFR 98.238. Commenter 0905 noted that also the subpart W approach to identifying the reporting entity predated CAA section 136 which lends no additional support to the EPA's proposed approach.

Commenters (0281, 0283, 0905) stated corporate law supports their reasoning and that "common ownership or control" generally means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or organization, whether through the ownership of voting securities, by contract or otherwise. They thought a better interpretation of CAA section 136(f)(4) would be that facilities that are under the common ownership or control of a single person or entity (whether or not that person or entity directly owns or operates each individual facility or its related equipment) is sufficient. The commenters (0281, 0283, 0905) noted that companies form or acquire different subsidiaries for a variety of reasons including: corporate governance, financial reporting, tax planning and facilitating financings and acquisitions. In virtually all cases, a common parent or owner maintains ultimate ownership, control and direction over its wholly owned subsidiaries and the assets the own or operate. For large, publicly traded companies, that may mean one hundred or more subsidiaries, but smaller ones may also have a number of subsidiaries. The commenters (0281, 0283, 0905) expressed concern that by limiting netting to facilities directly owned or operated by the same WEC obligated party, oil and gas companies who historically formed various subsidiaries operate assets or who have bifurcated ownership amongst different entities will be unfairly penalized. They further expressed concern that this penalty is compounded given the broad definition of "facility with respect to onshore petroleum and natural gas production for purposes of reporting..." in 40 CFR 98.238.

Commenters (0281, 0283, 0905) stated they should be permitted to net emissions across all their facilities located in the United States, regardless of which individual subsidiary owns or operates each facility, since all facilities contribute to such producer's total emissions, which ultimately are dispersed and well-mixed globally.

Commenter 0283 suggested that by restricting the ability to net, the EPA would perversely incentivize companies to focus only on methane reduction in facilities owned or operated by the same legal entity in order to minimize WEC obligations, rather than looking across its entire portfolio to determine where reductions may be most impactful and cost effective. They also suggested entities may be expend resources to create subsidiaries to mitigate their WEC obligations.

Commenter 0287 stated the EPA should give full effect of the netting provisions by establishing the presumption of netting rights default to the parent company of the owner or operator responsible for compliance with WEC. The commenter noted that the EPA already contemplated that co-owners, and/or operators would enter into binding agreements to assign responsibilities

for WEC compliances. The commenter suggested the agreements could be modified if the companies involved chose to do. The commenter suggested the usage of common ownership or control under subpart W does not support the EPA's interpretation. They believed that 40 CFR 98.4(i)(3) does not support netting rights below the parent level, but instead just calls for a listing of all owners and operators and does not speak to common ownership or control as it is used in CAA section 136.

Commenter 0287 references a number of policies and decisions that were listed:

1. On July 23, 2019, the EPA determined that the Southern Ute Tribe's 100percent ownership of an exploration and production company and the same Tribe's 51 percent net ownership interest in a gathering company established common control between the two companies. (https://www.epa.gov/sites/default/files/2019-10/documents/jaques2019.pdf.)

2. In 2018, the EPA issued a revised policy on how it would interpret "control" in the air permitting context, explicitly describing a parent/subsidiary relationship as an indicator of common control: "Thus, control exists when one entity has the power or authority to restrict another entity's choices and effectively dictate a specific outcome, such that the controlled entity lacks autonomy to choose a different course of action. This power and authority could be exercised through various mechanisms, including common ownership or managerial authority (the chain of command within a corporate structure, including parent/subsidiary relationships)…" (https://www.epa.gov/sites/default/files/2018-05/documents/meadowbrook_2018.pdf.)

3. In 2001, the EPA determined that DuPont and a joint venture that was 50 percent owned by DuPont and a third party were under common control, in the context of permitting two adjoining chemical manufacturing plants.(https://www.epa.gov/sites/default/files/2015-07/documents/dupont01.pdf.)

4. In 1995, the EPA advised state air permitting authorities that they should consider various factors in evaluating common control. The EPA's list of factors to consider are commonly associated with parent/subsidiary/affiliate relationships, such as "common workforces [and] executive officers", whether "the managing entity of one facility [can] make decisions that affect pollution control at the other facility", "share[d] common payroll activities [and] other administrative functions", "who accepts the responsibility for compliance with air quality control requirements", and "the financial arrangements between the two entities." (https://www.epa.gov/sites/default/files/2015-07/documents/control.pdf.)

5. In 1980, the EPA determined that a polyethylene plant wholly owned by a U.S. Steel subsidiary was under common control with a separate facility in which U.S. Steel held only a 50percent interest. (https://www.epa.gov/sites/default/files/2015-07/documents/tex-uss.pdf.)

6. Also in 1980, in establishing its primary air permitting regulations, the EPA discussed its view of "control" and specifically noted "voting shares" as a basis for finding business entities to be under common control: "However, the [EPA] will be guided by the general definition of control

used by the Securities and Exchange Commission. In SEC considerations of control, control 'means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person (or organization or association) whether through the ownership of voting shares, contract, or otherwise.' 17 CFR 210.1- 02(g)." 45 Fed. Reg. 59,874, 59,878 (Sept. 11, 1980) (https://tile.loc.gov/storageservices/service/ll/fedreg/fr045/fr045178/fr045178.pdf)

Commenter 0287 concluded that there is a large body of decisions establishing precedent for treating parent companies as in common ownership or control with their facility-owner subsidiaries which is more compelling than the EPA's argument in the proposed rule which, in the opinion of commenter 0287, appeared to be a misreading of 40 CFR 98.4(i)(3). Commenter 0287 stated instead, in creating CAA section 136, Congress was likely aware of the fact that parent-subsidiary relationships are common in the oil and gas sector, that parent companies are reported under subpart W, and that parents are generally treated as in common interest with their subsidiaries under the CAA.

Commenter 0229 presented case law supporting their argument embracing parent company level netting. Commenter 0229 first suggested that the EPA's proposal is not aligned with the goals of CAA section 136(f)(6), which is to provide for broad netting capability. In *Vill. of Barrington, Ill. v. Surface Transp. Bd.*, 636 F.3d 650, 660 (D.D. Cir. 2011) the court noted that the agency must show that its interpretation is rationally related to the goals of the statute. In *Dean v. United States*, 556 U.S. 568, 573 (2009), the Court found that where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion. Commenter 0229 believed it was arbitrary and capricious because the subpart W regulations refer to owner or operator, not the parent company. Lastly, in *United States v. Bestfood*s, 524 U.S. 51, 63 (1998), commenter 0229 saw a difference between carefully guarding against parental liability (a classic concern of corporate law) and inappropriately refusing to recognize a parent's ownership interest for purposes of assigning a benefit (netting).

Response 1: The EPA acknowledges the issues raised by the commenters. After review of all comments received and further review of the statutory language, the EPA has finalized an approach that allows for the transfer of negative net WEC emissions across WEC obligated parties that are under common ownership or control of the same parent company. The EPA refers the commenters to section II.B. of the preamble to the final rule for the rationale behind this decision. The EPA also notes that under the final rule, the owner or operator is the WEC obligated party and is responsible for the WEC filing and payment of WEC obligations. Regarding the comment that the EPA should institute a separate determination for identifying facilities eligible for netting, the EPA refers the commenters to section II.B. of the final rule preamble for the rationale regarding the EPA's interpretation that only WEC applicable facilities are eligible to transfer negative net WEC emissions. See also the response to comments in section 3.2.3 of this document. Regarding the suggestion of the definition of parent company, the EPA has incorporated a definition that aligns best with the final rule.

Comment 2: Commenter 0284 supported netting at the parent company level and suggested it could easily be implemented by adding one additional direct data field (or checkbox) in the electronic Greenhouse Gas Reporting Tool (e-GGRT) wherein owners or operators can indicate whether a facility is going to be subject to netting, and if so under which parent company. Another alternative the EPA could automatically implement netting based on the designated parent companies identified in e-GGRT. The commenter also believed this could easily be adjusted to allow companies to set ownership percentages in a given facility.

Response 2: The EPA acknowledges the support for the use of the parent company as the basis for netting and the ease with which the e-GGRT system could be updated to accommodate such reporting. The EPA refers the commenter to sections II.B. and II.B.1. of the preamble to the final rule for a discussion of the EPA's final application of the netting provisions of CAA section 136(f)(4), including the EPA's interpretation of "common ownership or control" to apply at the parent company level. The e-GGRT form is outside the scope of this rulemaking, however, the EPA appreciates suggested enhancements to the e-GGRT form and may take them into consideration during implementation of the rule.

3.1.2 Single WEC obligated party

Comment 1: Commenters (0335, 0703) suggested that the WEC obligated party should be the chief operator rather than the owner or operator selected by the group of owners and operators.

Response 1: After consideration of comments, the EPA is finalizing this provision as proposed. The commenters do not provide sufficient information showing why their proposed alternative would be a superior interpretation of the statutory language and it may involve implementation difficulties. The EPA refers the commenters to section II.A.3. of the preamble to the rule for a discussion of the rationale behind the definition of WEC obligated party.

3.1.3 Selection of the WEC obligated party

Comment 1: Commenter 0287 concurred with the proposed mechanism for selecting a WEC obligated party for facilities with more than one owner or operator through the selection of a binding agreement among the owners and operators of the WEC applicable facility.

Response 1: The EPA acknowledges the commenter's support for the proposed mechanism for selecting a WEC obligated party and is finalizing this requirement as proposed.

Comment 2: Commenter 0291 challenged the notion that all owners share responsibility, and instead suggested that only the operating entity at the time should be accountable, which would be consistent with historical regulatory practices that do not require unanimous owner agreement for fees. The commenter also stated that responsibility for errors pertaining to acquired facilities should not carry over to a new owner, which would prevent punitive measures for issues outside a new owner's control. The commenter suggested that their approach would recognize the operational transfer of control and allows for proportional responsibility up to the point of ownership transfer, rather than a blanket obligation for the entire year. The commenter further

questioned the need for an annual designated representative filing and suggested instead a filing be done only when the designated representative changes.

Response 2: The EPA disagrees with the commenter. As detailed in section II.A.3. of the preamble to the final rule, after consideration of the comments received, the EPA is finalizing a definition for the term "WEC obligated party" in 40 CFR 99.2. As finalized, the term WEC obligated party refers to the owner or operator of one or more WEC applicable facilities. The WEC obligated party of a WEC applicable facility must be one of the owners or operators of that facility under subpart W, as reported under 40 CFR 98.3(c)(14). For WEC applicable facilities that have more than one owner or operator, 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. As proposed, the final definition of WEC obligated party must be one of the owners or operators of the WEC applicable facility as of December 31 of the reporting year, with one exception. This exception is related to the circumstances in which a WEC applicable facility is involved in a transaction(s) subsequent to the end of the reporting year (*i.e.*, between January 1 and December 31 of the year following the reporting year) that results in all of the owners or operators (of the facility as of December 31 of the reporting year) ceasing to exist prior to the WEC filing date. In this case, the WEC obligated party would be one of the owner(s) or operator(s) that acquired the facility as a result of the transaction(s) to be selected by mutual agreement among all of the acquiring owner(s) or operator(s). This revision is necessary to avoid cases in which there is no eligible owner or operator to serve as the WEC obligated party. We note that in case of transactions where only one owner or operator ceases to exist and that entity was the WEC obligated party, the remaining owner(s) or operator(s) of the WEC applicable facility that were the owners or operators as of December 31 of the reporting year would need to select a new WEC obligated party. Additionally, we have finalized clarifying language in the definition of WEC obligated party to make clear that each WEC applicable facility must have only one WEC obligated party for a reporting year. This requirement was included in the proposed rule under proposed 40 CFR 99.4, but we are further clarifying by making it explicit in the definition of WEC obligated party.

3.2 Facilities Eligible for Netting of Emissions

Comment 1: Commenter 0279 believed that the EPA failed to clearly explain its proposed "netting" concept or propose a workable regulatory framework for netting. The commenter requested that the EPA clarify it significantly so that operators can provide meaningful comments.

Conversely, commenter 0294 supported the EPA's proposal that only WEC applicable facilities may net.

Response 1: Regarding the comment that the EPA failed to clearly explain the concept or failed to propose a workable regulatory framework for netting, the commenter did not provide details regarding perceived gaps in the EPA's rationale or specifics of the regulatory text which are problematic, so the EPA is unable to respond to these general comments. The EPA refers the

commenter to the discussions in II.B.4 of the preamble to the proposed rule for the EPA's rationale for the proposed netting provisions and to section II.B. of the preamble to the final rule for the EPA's discussion on the final netting provisions. Where other commenters provided specific comments on aspects of the netting rationale and regulatory text, those are addressed in sections 3.2.1 through 3.2.3 of this response to comment document. The EPA acknowledges the comment in support of the EPA's proposal regarding facilities which are eligible for netting.

Comment 2: Commenter 0321 urged the EPA to not allow netting of emissions across different facilities so as not to create an incentive for larger emitters to partner with lower emitters and avoid WEC charges. The commenter expressed the importance of lowering emissions by all parties, not just those that are already below the thresholds.

Response 2: The EPA acknowledges the comment "to not allow netting of emissions across different facilities" but notes that Congress explicitly created the netting provision in CAA section 136(f)(4), therefore the EPA does not have the discretion to prohibit netting of emissions across different facilities so long as such facilities are WEC applicable facilities.

Comment 3: Commenter 0327 concurred with the EPA's proposed approach to only allow netting of emissions across WEC applicable facilities. They noted that facilities not subject to WEC (those below 25,000 tons CO_2e) are excluded from netting as it would be improper. They agreed that only WEC applicable emissions should factor into the netting calculation. The commenter further noted it was not possible to track subsidiary-level owners/operators under subpart W and that WEC may drive changes in the owner/operators reported under subpart W. Therefore, the commenter requested the EPA make a list of owners/operators publicly available, including the designated representative for facilities with joint ownership.

Response 3: The EPA acknowledges the comment in support of the EPA's proposed approach to only allow netting only across WEC applicable facilities. The EPA is finalizing those provisions as proposed. The EPA also refers the commenters to section II.B. of the preamble to the final rule for the rationale regarding the EPA's decision to finalize the rule, using the alternative approach in the proposal, that allows for the transfer of negative net WEC emissions across WEC obligated parties that are under common ownership or control of the same parent company. As far as what information will be made publicly available, based on part 98 subpart A related provisions finalized with this action, the EPA intends to publish owner and operator information, subject to the EPA review for material that may be subject to personal privacy protections.

3.2.1 Facilities with Subpart W Emissions Greater Than 25,000 Metric Tons of CO2e That Are Receiving the Regulatory Compliance Exemption

Comment 1: Commenter 0276 stated that the EPA's position and logic regarding netting of WEC applicable facilities are confusing and suggested the EPA should encourage all WEC applicable facilities to both: "(1) achieve emissions below the waste emissions threshold; and (2) to maintain compliance such that the WEC Applicable Facility is eligible for the Regulatory Compliance Exemption. The commenter agrees with the EPA that nothing should require an operator of a WEC Applicable Facility that does not seek the benefits of the regulatory

compliance exemption to have to undertake the necessary resources to demonstrate compliance with the regulatory compliance exemption. However, an operator should be able to make the demonstration that it meets the regulatory compliance exemption even if it has emissions below the WEC threshold. The commenter contended that this is important in the event that an operator submits emissions calculations below the WEC threshold but where subsequent calculations (either the operators or through the verification process at the EPA) evidence emissions above the WEC threshold. In that case, an operator who was below the WEC threshold initially may need to subsequently rely upon the regulatory compliance exemption."

Response 1: Regarding the comment that the operator should be able to make a demonstration that it meets the regulatory compliance exemption, even if emissions are below the WEC threshold if subsequently they discover methane emissions were above the WEC threshold, the EPA notes that irrespective of the WEC, sources subject to the NSPS OOOOb or EG OOOOc-implementing plans issued pursuant to CAA section 111(d) should be in compliance with those requirements. The EPA cannot comment on specific theoretical scenarios, but notes that the final requirements of 40 CFR 99.7(e) and 40 CFR 99.8(d) address WEC filing revisions following the discovery of substantive errors. The eligibility of claiming the regulatory compliance exemption would be subject to the provisions of 40 CFR 99.40 – 99.43 . Generally, however, it is beyond the scope of the regulatory compliance exemption to require an owner/operator to make that demonstration under the WEC for sources which are determined to not be eligible (*i.e.*, have emissions below the waste emissions threshold), in anticipation of some potential future change.

3.2.2 Exclusion of Facilities Reporting 25,000 or Fewer Metric Tons of CO2e to Subpart W of Part 98

Comment 1: Many commenters (0193, 0199, 0208, 0220, 0229, 0239, 0267, 0268, 0273, 0276, 0278, 0279, 0280, 0282, 0283, 0287, 0289, 0291, 0298, 0905) argued that all facilities that report under subpart W, regardless of emissions levels, should be allowed to net.

Commenters (0276, 0284, 0289) recommended to the extent that a company voluntarily reports facilities that are under the 25,000 mt CO_2e threshold, those facilities should also be included as a WEC applicable facility; and that facilities should be allowed to net at the parent company level.

Similarly, commenters (0267, 0276, 0291) suggested that netting should be allowed for all facilities and should not be restricted to just WEC applicable facilities, especially when an owner eligible for exemptions should not be excluded from netting either. Commenters (0287, 0276) argued that it was Congressional intent that facilities be allowed to reduce their obligation through netting emissions from facilities that are below the emission thresholds that are under common ownership or control. Commenter 0276 contended that the inability to net assets that have achieved the regulatory compliance exemption or whose emissions are below the WEC threshold and the inability to net assets at the parent company level may not incentivize deeper emission reductions.

Commenter 0229 stated that the EPA's proposal to allow netting only at facilities greater than 25,000 mt of CO_2e is arbitrary and capricious. The commenter explained that tax netting under CAA section 136 is intended to allow an owner with multiple facilities to balance out emissions above the thresholds with emission levels below the thresholds. The commenter explained that the statute states that netting is meant to "account for facility emissions levels that are below the applicable thresholds" and because "thresholds" here is plural, this indicates that both the initial methane tax threshold and the charge-calculating threshold are to be considered. Commenters (0193, 0208, 0229, 0273, 0280, 0283, 0289, 0298, 0905) are further concerned that a decision only to reward emission reductions above the 25,000 mt threshold incentivizes owners only to reduce emissions to this level or creates a perverse incentive for owners on the threshold to increase their emissions (above 25,000 mt) to that they can reap the benefits of netting. Commenter 0289 suggested that to counter the negative incentive, the EPA should allow operators to voluntarily report emissions information through either the WEC filing or the GHGRP for basins which are below 25,0000 mt threshold for the purposes of netting their WEC obligation. At a minimum, the commenter urged the EPA to allow netting of emissions for those required to report under the GHGRP for the five years after the basin has fallen below 25,000 mt CO_2e.

Commenter 0239 believed that a goal of the IRA was to reward companies in the oil and gas industry that reduce GHG emissions across their operations, as evidenced by the fact that the IRA explicitly states that netting is to be used for "reducing" the total obligation and does not allow for netting to ever increase the WEC. The commenter stated that the EPA's proposal, that sources be "subject to the WEC" before they can be considered in netting calculations, denies WEC obligated parties the opportunity to net emissions from facilities that are not subject to the WEC because of their successful implementation of methane reduction measures, and therefore undermines Congress's goal to incentivize the oil and gas industry to reduce methane emissions. Specifically, commenters (0239, 0298) stated that the EPA misread the statute and incorrectly used the term "applicable thresholds" to be interpreted as "waste emissions thresholds." The commenter stated that Congress did not include the phrase "waste emissions threshold" in this provision and by contrast did use the phrase in the next provision, which proves that the choice to leave "waste emissions threshold" out of the netting provisions was intentional.

Commenters (0220, 0280, 0283, 0287, 0905) had concerns with the EPA's reading of CAA section 136(f)(4). Commenter 0283 stated that the EPA's creation of the term "WEC applicable facility" was inappropriate and that the EPA should not use the term to establish a subset of facilities and restrict netting to those facilities, as the statute has no such limitation. Commenter 0283 pointed out what they considered to be the flaw in the EPA's reasoning regarding the reading of CAA section 136(f)(4). The commenter explained that with respect to this citation, it speaks of "reducing the total obligation to account for facility emission levels that are below the applicable thresholds within and across all applicable segments…," whereas the EPA's proposed interpretation is that this should be read together with the beginning of CAA section 136(f)(4), "[i]n calculating the total emissions charge obligation for facilities under common ownership or control," which in turn should be read back together with subsection (c), "[t]he administrator

shall impose and collect a charge on methane emissions . . . from the owner or operator of an applicable facility that reports more than 25,000 metric tons." The commenter stated that this synthetic reading led the EPA to propose that CAA section 136(f)(4) only intended to allow netting with respect to "facility emissions levels" from reporting over the 25,000 mt threshold. The commenter stated this is incorrect and assumes the conclusion. If instead the EPA viewed netting as eligible for all facilities, as the plain text of CAA section 136(f)(4) provides, the netting then becomes a relevant input in calculating the total charge obligation for those facilities that are above that threshold, argued the commenter. Commenter 0905 similarly stated that limiting netting only to "WEC applicable facilities" is facially inconsistent with the plain text of CAA section 136(f)(4). The commenter opined that the only limiting provisions in that section was the term "common ownership or control," and that once that is established, then the statute unambiguously allows netting of "facility emissions levels that are below the applicable thresholds within and across all applicable [industry] segments," without any limitation on "WEC applicable facilities." To summarize, the commenter stated that CAA section 136 dictates the proper outcome - to begin, a facility with less than 25,000 tpy of GHG emissions plainly is an "applicable facility" because it is a "facility within [specified] industry segments, as defined in subpart W." That interpretation is reinforced by CAA section 136(c), which instructs that an "applicable facility that reports more than 25,000 metric tons" of GHGs may be required to pay a fee, stated the commenter and that provision clearly connotes that a facility with less than 25,000 tons per year of GHG emissions still must be considered an "applicable facility." Moreover, stated the commenter, CAA section 136(f)(4) further provides that, for "facilities under common ownership or control," the EPA must "allow for the netting of emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds." The commenter explained that nothing in that provision limits netting only to facilities required to determine whether their methane emissions exceed an applicable waste emissions threshold and instead plainly requires the EPA to allow owners or operators without limitation to "account for" all "facility emissions levels that are below the applicable thresholds" – including emissions from facilities with total GHG emissions below 25,000 tons per year. Commenter 0287 similarly supports this interpretation, stating that facilities with emissions below 25,000 mt per year CO_2e continue to be applicable facilities with an applicable threshold, even though their emissions fall below the threshold. The commenter believed that the EPA's interpretation of these provisions is not the best reading of the statute and is unnecessarily narrow, undermining congressional intent for the netting provision. The commenter stated that CAA section 136(f)(4) directs the Administrator to allow for netting to reduce the total charge obligation for facilities under common ownership or control "to account for facility emissions levels that are below the applicable thresholds." Thus, it is emissions from applicable facilities that are relevant for netting purposes, not only emissions from so-called WEC applicable facilities, explained the commenter. To summarize, the commenter stated that an applicable facility is defined by law as being within one the of nine subpart W reporting segments, and no other requirement applies. Accordingly, the segment thresholds apply even if a facility does not report greater than 25,000 mt CO_2e, explained the commenter. Emissions from facilities that report less than 25,000 mt CO_2e (either as required by GHGRP or on a voluntary basis under GHGRP) should therefore be available for

netting under the plain language of CAA sections 136(f) and 136(c) stated the commenter. The commenter further concluded that because these facilities could increase their emissions at any time to exceed the 25,000 mt CO_2e statutory cutoff for application of the fee, this is not a case where an owner or operator would be netting emissions, *i.e.*, getting credit, for "various other subpart W facilities for which a WEC charge can never be imposed." Those facilities could become subject to a fee, argued the commenter and the ability to net emissions from these facilities provides a strong incentive to ensure that emissions do not increase, consistent with the overall purpose of the WEC and CAA section 136. Commenter 0280 stated that the language of CAA section 136(f)(4) does not lead to a conclusion that only facilities with subpart W emissions above 25,000 mt CO_2e may be excluded from the netting process. The commenter explained that the term Congress used was "facility," and while defined in the IRA is commonly understood to mean a site or equipment grouping that creates air emissions. The commenter pointed out that Part 98 (of which the IRA specifically refers) defines "facility" broadly and in a way that does not distinguish between > 25,000 mt CO_2e and < 25,000 CO_2e facilities. The commenter stated that Congress presumably was aware of the use of the term "facility" and did not intend to limit the meaning to a set of facilities that report above a certain amount; doing so would be the preferable interpretation, stated the commenter, given the policy benefits and emission reduction incentives that would be achieved by that interpretation.

Response 1: The EPA disagrees with these comments and refers to section II.B.2. of the final rule preamble for the rationale regarding the EPA's interpretation that only WEC applicable facilities may net.

Comment 2: Commenter 0287 supports the EPA's conclusion that facilities that are below the waste emission threshold should not receive the regulatory compliance exemption and that their emissions should be available for netting.

Response 2: The EPA acknowledges the comment and is finalizing as proposed that only WEC applicable facilities are eligible for the regulatory compliance exemption and may net.

3.2.3 Exclusion of Facilities Not Required to Report to the GHGRP

Comment 1: Several commenters (0208, 0268, 0287) requested that the EPA allow a voluntary opt-in for reporting. Commenter 0268 recommend that the EPA allow companies the choice to include all their assets as WEC applicable facilities – regardless of subpart W applicability. The commenter believed that netting should be allowed to occur at the highest owner to help incentivize emission reductions across operations under the same parent company. Commenter 0287 stated that doing so would result in more data for the EPA, and it would bring additional emissions under the management of a regulatory program.

Response 1: The EPA disagrees with this comment. See the discussion in section II.B.2.b. of the preamble to the final rule regarding the EPA's determination that only facilities with reported emissions pursuant to subpart W greater than 25,000 mt of CO_2e may net and the discussion in section II.B.2.c. of the preamble to the final rule for the EPA's rationale to exclude facilities

reporting 25,000 or fewer mt of CO_2e to part 98 subpart W. As discussed in the above-mentioned sections, the most consistent plain reading of the CAA is an approach where a facility must first be a WEC applicable facility and have WEC applicable emissions. See the discussion in section II.B. of the preamble to the final rule for the EPA's determination of allowing for the netting of emissions across facilities that are under "common ownership or control" of a parent company for the purposes of implementing the netting provisions of the WEC.

4 Eligible Delays in Environmental Permitting (CAA Section 136(f)(5))

Comment 1: Commenters (0149, 0154, 0155, 0157, 0160, 0161, 0163, 0167, 0174, 0181, 0327, 0656, 0936) recommended the EPA retain strong and clear criteria to remain in the final rule for operators seeking an exemption based on unreasonable permitting delays. Commenter 0167 added that without clear delay messaging, it would be difficult to determine if a delay is the result of the operator, a legitimate unforeseen event, or supply chain interruption. Commenter 0167 stated that by having solid criteria, disingenuous operators are prevented from availing themselves of the exemption through opaque claims. Commenter 0656 stated the exemption should be closely monitored, so as to avoid abuse and asked the EPA to support an open, fact-based procedure for exemption eligibility.

Response 1: The EPA acknowledges the commenters' support for strong, clear criteria in the final rule as a basis for determining eligibility for the exemption based on unreasonable permitting delay. After review of the comments received, we have finalized the unreasonable permitting delay exemption with the following criteria: (1) the facility must have emissions that exceed the waste emissions threshold; (2) the entity seeking the exemption must have not contributed to the delay in permitting; (3) the exempted emissions must be those resulting from gas used as an onsite fuel source, gas used for another useful purpose that an otherwise purchased fuel or raw material would have served, gas reinjected into a well, or gas flared, if that gas would have been routed to a gas gathering flow line or collection system to a sales line without the permit delay; and (4) a period of 36 months must have passed from the time a submitted permit application was determined to be technically complete by the applicable permitting authority. The revised list of emission sources that are eligible for the exemption aligns the WEC rule more closely with the 2024 NSPS/EG rule. Emission sources now eligible for the exemption must also be in compliance with the applicable local, state, and Federal environmental regulations.

The EPA believes that through these clarifications, facilities will assure steps are taken to be responsive during the permitting process as well as be encouraged to find other uses of natural gas or petroleum when experiencing an unreasonable environmental permitting delay.

Comment 2: Commenter 0905 expressed that the EPA's criteria for the unreasonable delay are unduly restrictive given the various environmental permits required for oil and gas infrastructure and requested that the EPA provide maximum relief to operators when Federal, state, or local agencies fail to issue permits in a timely fashion.

Response 2: We refer the commenter to the response to comment 1 of this section of this document and section II.D.1. of the preamble to the final rule.

Comment 3: Commenter 0327 suggested the EPA make three targeted adjustments to the proposal regarding eligible delays in environmental permitting to increase clarity and specificity.

- The commenter suggested that the EPA have the ability to request any other documentation deemed relevant to determine eligibility beyond what is in the proposal by adding additional condition at 40 CFR 99.31(b)(11) that reads: Any other documentation deemed relevant by the Administrator for determining eligibility.
- The commenter suggested that the EPA should clarify that new infrastructure may not be necessary for offtake of increased volumes where existing capacity exists to offtake additional gas that would otherwise be flared. The commenter does not believe the exemption should be granted where an operator does have existing offtake capacity, even if a permit has been delayed unreasonably. The commenter urged the EPA to take care to request records relevant to a facilities existing offtake capacity.
- The commenter requested that the EPA expressly state in the final rule that the exemption only exempt emissions from specific wellhead(s) or platforms that would be directly connected to the infrastructure for which the permit is unreasonably delayed and not automatically apply to the emissions across an entire basin.

Response 3: The EPA acknowledges the suggestions raised by the commenter. After consideration of the comments received, we have expanded the emissions eligible for exemption due to an unreasonable environmental permitting delay as discussed in section II.D.1. of the preamble to the final rule and in the response to comment 1 in this section. We have finalized the calculations to determine emissions eligible for the exemption in 40 CFR 99.32 to appropriately account for other uses as discussed in the response to comment 1. Regarding the suggestion to add the ability for the EPA to request other information, the EPA refers the commenter to the response to comment 1 found at section 4.2.

Comment 4: Commenter 0216 suggested that the EPA should further clarify the types of permits that would be eligible for the exemption by including those relating to siting and zoning of pipelines, compressor facilities, gas processing facilities, and other infrastructure.

Response 4: The EPA disagrees with the commenter's suggestion to extend environmental permitting to those approvals related to local siting and zoning of pipelines, compressor facilities and other infrastructure. Local siting and zoning approval is separate from environmental permitting. Environmental permitting is done to assure that activities will be constructed and operated in a manner that will protect the health of the air shed, the land quality, and water quality. Environmental permitting authorities review permit applications and establish conditions in permits to assure compliance with Federal and state environmental statutes such as the Clean Air Act and the Clean Water Act. Zoning is handled at a local level and is primarily for purposes of land use compatibilities and classifications such as residential, commercial, hotel/hospitality, agricultural and industrial. The intent of zoning is to allow local governments the ability to promote economic development, while reserving living space for residents and managing traffic

levels. The EPA does not have authority to enforce local zoning requirements. Consistent with the best reading of the statute, we are limiting the scope to those environmental permits with a nexus based in Federal statute in environmental permitting, which includes but is not limited to permits under New Source Review, Prevention of Significant Deterioration, Title V Operating, Clean Water Act (CWA) 404, CWA 401 Certification, Underground Injection Control, National Pollutant Discharge Elimination System, Industrial Stormwater, Construction Stormwater, and Resource Conservation Recovery and Control.

Comment 5: Commenters (0231, 0239, 0298) expressed that meeting all four criteria would make it difficult if not impossible for parties to make use of the exemption. Commenters (0239, 0298) suggested that the EPA would need to make a subjective determination that a delay was unreasonable even if all the criteria were met, leaving industry with uncertainty and a potential backlog for the government with making such determinations. Commenter 0298 suggested the EPA remove language that would punish exemption-seeking entities (*e.g.* upstream oil or natural gas providers) that have no influence over separate, permit-seeking entities or their previous actions, make the conditions for a company to receive the exemption clear and objective, and simplify information submittal requirements to make it clear as to exactly what information would be needed to satisfy the Agency's review.

Response 5: In regard to the final comment, the EPA has finalized the second criteria such that entities with no control over the permit seeking entity will not contribute to ineligibility for the exemption. The EPA disagrees with the other comments. As discussed in section II.D.1.a. of the preamble to the final rule, we believe the approach in the final rule will establish a predictable process for facilities to take action to limit or settle any applicable WEC obligation. As detailed in section II.D.1.a., we have addressed concerns raised by some of the commenters by only requiring only the entity seeking the exemption to have not contributed to the delay in permitting. We believe it is reasonable to expect that the entity (*i.e.*, the WEC obligated party) seeking the exemption does not contribute to delays in the permitting action. The final rule sets a 36-month timeframe from when the permit application is deemed technically complete by the permitting authority. This timeframe is intended to provide a predictable process for determination of this exemption, given that there are so many different contexts in which it might apply, and the unreasonableness of each could vary widely, and is not specific to particular permitting actions or agency timelines.

4.1 Emissions Eligible for the Permitting Delay Exemption

Comment 1: Commenter 0239 expressed that in their experience upstream oil and natural gas producers are unlikely to be able to access the information the EPA would require to prove eligibility for particular subset of a facility's emissions. The commenter expressed concern for the ability of producers to meet all four criteria of the exemption in order to qualify. By way of example, the commenter stated that producers are often the customers of the separate entities responsible for receiving permits for gathering and transmission infrastructure and are unlikely to have information about the permitting process, let alone have any control over whether the entity seeking the permit contributed to any delays in the permitting process. The commenter stated that the statute does not require that no other party contributes to the delay, just that the delay is

unreasonable. The commenter further stated that even if consideration was given to third-party delays, suggesting that entities always respond to information requests within the time specified by the permitting agency or within 30 days if no time specified ignores those times when requests are more complex and require additional time to respond.

Response 1: The EPA agrees with the commenter's concerns that the party seeking the exemption due to an unreasonable delay in environmental permitting may not be the same entity seeking the environmental permit, and therefore may not have access to all of the information the EPA was seeking in the proposed rule to determine eligibility. In the final rule, as discussed in section II.D.1.a. of the preamble to the final rule and in the response to comment 1 in section 4, the WEC obligated party seeking to exempt a portion of its facility applicable emissions from a WEC applicable facility must not have contributed to the delay. Therefore, the WEC obligated party must be responsive to requests for information regarding the permit application (within 30 days or other timeframe as agreed to by the permitting authority) and not be a plaintiff in litigation regarding the permit application. Furthermore, 40 CFR 99.30(c) is not intended to be exhaustive in that there may be other ways a WEC obligated party could contribute to a permitting delay (*i.e.*, placing an application on hold for an extended period of time).

4.1.1 Responsiveness to requests as a criteria

Comment 1: Commenter 0283 suggested that a party exceeding the requested response time for additional information to a permitting request is draconian and could lead to the exemption being unavailable for a one-day delay in providing information. Commenters (0229, 0905) disagreed with a brightline approach because they do not reflect the actual ebb and flow of permitting actions. Commenter 0905 asserted that someone could become ineligible for the exemption should a permitting authority impose an unreasonably short deadline or if even despite best efforts it takes longer than 30 days to for information to be compiled. Commenter 0283 stated CAA section 136(f)(5) does not provide for an entity being excluded from the exemption for any contribution to the delay on their part, no matter how minor. Commenter 0283 suggested that instead 40 CFR 99.30(c) be revised to allow that the timeline be extended by the number of days by which the requesting party was late in delivering information.

Response 1: The EPA recognizes that during the permitting process there is a back-and-forth communication process that occurs between the applicant and the permitting authority. The intent of this provision is to assure that as the permitting authority is requesting information to process the permit application, the applicant is responsive to those requests for information. As a best practice, permitting authorities should be establishing reasonable deadlines for when they would like a response to be received. Permit applicants are expected to be communicating with their regulatory authorities regarding deadlines. Communication is a key part of the permitting process and if an applicant requires additional time to respond, they should be making such requests of the permitting authority in a reasonable timeframe to keep the permit process moving forward. The provision at 40 CFR 99.30(c) has been revised from proposal to allow for the permitting authority to agree to additional time to respond by the applicant, if requested. As noted in section II.D.1.a. of the preamble to the final rule, we recognize that the permit applicant

and the entity seeking the exemption may not be the same, however, the entity seeking the exemption must not have contributed to the permitting delay.

Comment 2: Commenter 0287 suggested that in the final rule the EPA should acknowledge that during the permitting process, an agency may send requests seeking response by a particular date, and the applicant may request additional time within which to respond. Commenter 0287 requested that the EPA clarify that the final rule allows that such situations, when agreed to by the permitting agency, do not constitute unresponsiveness. The commenter offered the following edit to the regulatory text:

99.31(b)(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 *or agreed to by* the relevant authority or within 30 days if no timeframe is specified.

Response 2: The EPA acknowledges the suggestion made by the commenter and has incorporated it into the final rule.

Comment 3: Commenters (0165, 0184, 0225, 0327) all supported a final rule that retains the permitting delay exemption as proposed to ensure it is only available when the delay was not the result of an operator's inaction. Commenter 0327 stated the EPA has attached commonsense criteria to an important metric and the temporal requirements the EPA established along with the requirement that operators must not have contributed to the delay align with the plain meaning of the term "unreasonable."

Response 3: The EPA acknowledges the commenters' support. After consideration of the comments received, as discussed in section II.D.1.a. of the preamble to the final rule and in response to comment 1 of section 4, we have clarified eligibility and expanded the emissions eligible for exemption due to environmental permitting delay from those proposed.

4.1.2 30 days to assess responsiveness

Comment 1: Commenter 0293 suggested that giving a default of 30 days if not otherwise specified by the requestor creates a situation where an individual facility's exemption would be dependent on the actions and activities of a regulator or entity not directly responsible for the operation of that facility. The commenter further stated that the rule does not define what is meant by a complete application.

Response 1: The EPA disagrees with the comment. The intent of providing a default responsiveness timeframe of 30 days is to prevent responses to requests for information from languishing and to keep the permit process moving along. It is incumbent upon the permit applicant to be responsible for their permitting process by paying close attention to requests for information and deadlines for such. If a response cannot be provided within 30 days or within a timeframe specified by the permitting authority, it is up to the applicant to communicate with the permitting authority regarding a reasonable timeframe by when they can respond.

Communication is key to a successful permitting process. We have revised 40 CFR 99.30(c) to allow for the permitting authority to agree to additional time to respond by the applicant, if requested. Regarding comments related to what is meant by a complete application, the EPA notes that each environmental application and program has requirements for what an application must entail, therefore it is out of scope to define those parameters in this rulemaking.

4.1.3 Emission sources that are eligible

Comment 1: Commenters (0229, 0239, 0267, 0268, 0278, 0291, 0905) requested the EPA consider allowing the exemption to extend beyond only flaring emissions. Commenter 0291 stated there may be cascading effects of such delays on multiple emission sources that should be considered, including incremental emissions related to pipeline construction delays and Commenter 0278 requested that any emission that can be captured and routed to a sales line should be allowed to be exempted. Commenter 0229 stated that the EPA cannot deny the exemption for venting emissions as another way of burning off excess gas merely because venting such emissions is widely restricted and the statute is not specific to flaring in that it exempts all emissions that exceed the waste emissions threshold if such emissions are caused by unreasonable delay in environmental permitting.

Commenter 0905 offered additional examples of emissions that may result from unreasonable delay include the use of gas as an onsite fuel source (even though the commenter believed emissions should fall under subpart C or be exempted from WEC), the use of gas for a useful purpose that a purchased fuel or raw material would serve (such as an onsite process), and the use of gas for reinjection into the well or injection into another well. Commenter 0905 also stated methane emissions from storage vessels may result from an unreasonable delay. The commenter requested an exemption from generator engine emissions since using these to power instrument air skids for NSPS OOOOb/EG OOOOc compliance was acceptable for process controllers and pumps.

Response 1: The EPA acknowledges the commenters' suggestions to expand the emissions eligible for the exemption beyond only flaring emissions. After consideration of the comments received, as discussed in section II.D.1.a. of the preamble to the final rule and in response to comment 1 of section 4, we have clarified eligibility and expanded the emissions eligible for exemption due to an unreasonable environmental permitting delay from those proposed. Specifically, The EPA is finalizing a revised list of emissions sources that are eligible for the exemption to align the WEC rule more closely with the 2024 NSPS/EG rule, including: the use of gas as an onsite fuel source, gas used for another useful purpose that an otherwise purchased fuel or raw material would have served, gas reinjected into a well, and flaring of gas.

Comment 2: Commenter 0278 stated it is unworkable and not practical to expect compliance with all Federal, state, and local regulations regarding flaring emissions since an operator may have hundreds or thousands of wells in the basin(s) with a single minor issue at one site preventing it from using the exemption. The commenter requested the EPA reconsider the compliance requirement that would consider proven environmental violations and the nature of such violations (severity, impact, frequency, time period, or whether it was outside of the entity's

control.)

Relatedly, commenter 0905 stated that the EPA must clarify the meaning of "in compliance with all applicable local, state and Federal regulations regarding flaring emissions" and suggested the following revisions:

- "All applicable local, state and Federal regulations regarding flaring emissions" should be limited to environmental regulations, and not those regulations of other agencies such as state oil and gas commissions. The commenter suggested making this clear would avoid potential confusion.
- Only violations that are proven through an adjudication or those to which an entity admits liability would disqualify the flaring emissions from the exemption. Facilities should not be subject to liability or interest if the EPA or another environmental authority later determines violations existed. The commenter pointed out that time is sometimes necessary to determine liability for violations and interest should not be assessed because that would penalize entities for exercising their right against challenges against alleged violations.

Response 2: The EPA acknowledges the commenter's suggestions to clarify the meaning of "in compliance with all applicable local, state, and Federal regulations regarding flaring emissions." After consideration of the comments received, as discussed in section II.D.1. of the preamble to the final rule the EPA has clarified eligibility and expanded the emissions eligible for exemption due to unreasonable environmental permitting delay from those proposed. The EPA is finalizing a revised list of emissions sources that are eligible for the exemption to align the WEC rule more closely with the 2024 NSPS/EG rule, specifically: the use of gas as an onsite fuel source, gas used for another useful purpose that an otherwise purchased fuel or raw material would have served, gas reinjected into a well, and flaring of gas. The EPA is finalizing that emissions from these sources must meet two criteria to be eligible for exemption: (1) all activities associated with these emissions must be in compliance with all applicable environmental local, state, and Federal regulations, and (2) the emissions must have only occurred as the result of an unreasonable delay in environmental permitting, as defined in II.D.1. of the preamble to the final rule and 40 CFR 99.30. The EPA believes that this approach reasonably follows from the text of CAA 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*." Any emissions from activities that are not in compliance with applicable regulations are ineligible for the exemption.

Regarding the practicality of determining the compliance status or whether noncompliance should be adjudicated in order to disqualify emissions from the exemption, it is the WEC obligated party's responsibility to certify to the compliance status with all applicable environmental local, state, and Federal regulations when applying for the exemption. The EPA understands that the unreasonable delay provision is designed to exempt emissions from activities done in compliance with regulations, where sources are prepared to capture gas, but cannot yet do so due to lack of offtake infrastructure. If the EPA or another environmental authority later finds that the emissions reported to be exempted were from activities in

noncompliance, the WEC obligated party may be subject to the provisions of 40 CFR 99.10 and 99.11.

Comment 3: Commenter 0327 stated that the EPA has made it easy for operators to determine and project how the exemption will affect their overall WEC obligation. The commenter agreed the proposal seemed to align well with the statutory text which identified environmental permitting of gathering or transmission infrastructure as being subject of delayed permitting, which is generally mitigated through flaring of emissions. Other types of emissions, such as fugitive emissions from leaks, are mitigated through other means like leak detection and repair programs, which do not require permitting of offtake infrastructure.

Response 3: The EPA acknowledges the commenters' support. After consideration of the comments received, as discussed in section II.D.1. of the preamble to the final rule and in response to comment 1 of section 4, we have clarified eligibility and expanded the emissions eligible for exemption due to unreasonable environmental permitting delay from those proposed. The EPA is finalizing a revised list of emissions sources that are eligible for the exemption to align the WEC rule more closely with the 2024 NSPS/EG rule, specifically: the use of gas as an onsite fuel source, gas used for another useful purpose that an otherwise purchased fuel or raw material would have served, gas reinjected into a well, and flaring of gas.

4.1.4 Appropriate timeframe to assess unreasonable delay

Comment 1: Commenters (0216, 0239, 0267, 0270, 0283, 0285, 0291, 0299) all expressed disagreement with a delay threshold of between 30 and 42 months being used. All believed it was too long and would severely restrict the utility and availability of the permitting delay exemption contemplated by CAA section 136. Commenter 0216 stated that operators would have to pay years of burdensome fees for circumstances beyond their control. Commenter 0267 added that the IRA intended to fast track the approval process for adding additional takeaway capacity as soon as it was needed to support oil and gas growth with minimal flaring and that the proposal does not support this because wells often decline significantly in three years and allowing three years to start construction may exacerbate the emissions issues, contrary to the stated goal of the IRA. Commenter 0283 implied using the FAST-41 program was not an appropriate nor accurate representation of the types of pipeline projects that may lead to a delay as not all will be Federal in nature or require the level of capital contemplated by the FAST-41 program. Commenter 0283 further asserts that there was no reason to believe that Congress wanted the EPA to look to the current, broken state of permitting and concomitant delays to establish a baseline to determine what was "unreasonable." Commenter 0283 suggested instead, finalize a delay timeframe of 18 months, along with removing the "completeness determination" condition.

Response 1: The EPA disagrees with the commenters. Contrary to what commenters suggest, the plain text and the use of the term "unreasonable" suggests that this exemption is intended to apply in exceptional, and not routine, situations. In other words, the statutory text does not suggest that Congress meant to "fast track the approval process". Moreover, the EPA notes that the commenters did not provide data to support a timeframe shorter than the range proposed. The EPA believes using a specified timeframe eases administration of the exemption by establishing

clear expectations of what is an unreasonable delay in environmental permitting for purposes of this exemption under this program. Furthermore, we disagree with removing the completeness determination condition. A technically complete application is one of the essential key elements to a smooth permitting process. To remove this element could result in poor, incomplete applications being submitted to permitting authorities. Applicants should be communicating with their permitting authorities in establish clear expectations for what is needed in the application, workload management, and permitting timelines. After consideration of the comments received, we have finalized that thirty-six (36) months must have passed since the environmental permit application was determined to be technically complete by the permitting authority and expanded the emissions eligible for exemption due to an unreasonable environmental permitting delay from those proposed, as discussed in section II.D.1. of the preamble to the final rule and in the response to comment 1 of section 4.

Comment 2: Commenter 0905 suggested that the EPA use the benchmark of an application being administratively complete, rather than technically complete should the EPA choose to implement a set period of months to assess unreasonable delay. The commenter stated that permitting agencies have different definitions and levels of completeness regarding applications and the first, administrative, is the simplest level.

Response 2: The EPA disagrees with the commenter's suggestion to utilize administratively complete as the benchmark in lieu of technically complete for when to begin the 36-month clock for a reasonable permitting timeframe. Permit applications and the respective processes require different levels of review, depending upon the complexity. As an example, a Prevention of Significant Deterioration permit application may be determined to be administratively complete, but upon technical review is determined to be technically incomplete, because the applicant needs one-year of pre-application monitoring or to submit air quality dispersion modeling.

Comment 3: Commenter 0190 supported the EPA giving an exact timeline of an unreasonable delay. The commenter stated that without clear expectations, it would be difficult to withhold an exemption based on the provision; operators may be chasing the incentive of a fee waiver to reduce their methane emissions, so expectations must be as unambiguous as possible.

Response 3: The EPA acknowledges the commenter's support for a clear timeline. After consideration of the comments received, we have finalized that thirty-six (36) months must have passed since the environmental permit application was determined to be technically complete by the permitting authority and expanded the emissions eligible for exemption due to an unreasonable environmental permitting delay from those proposed, as discussed in section II.D.1. of the preamble to the final rule and in the response to comment 1 of section 4.

4.1.5 Single timeframe versus by-permit type

Comment 1: Commenter 0287 suggested the EPA align its unreasonable delay criterion to statutory deadlines such as those found under the new source review program at CAA section 165, 42 U.S.C. 7475(c) which says the EPA must grant or deny a permit not later than one year after the date of filing of such completed application. Commenter 0287 also suggested to

establish that deadlines negotiated between permit applicants and permitting authorities are not unreasonable. Commenter 0232 also believed establishing different timeframes for different types of permits would be appropriate. Commenter 0232 suggested that timelines vary by type and jurisdiction and therefore specific timeframes should be described in the final rule.

Response 1: The EPA acknowledges the suggestion by the commenter, however, not all environmental media programs have a statutory or regulatory timeframe by when a permit decision must be made therefore in lieu of using different timelines for each type of environmental permit, we have finalized the rule using one timeframe of 36-months.

4.1.6 Eligibility based upon specific types of delay

Comment 1: Commenter 0897 suggested that the term "negligence" would be a clearer standard rather than "contribution" to the delay in reporting or compliance. The commenter suggested that an entity may not have the time or resources needed to comply quickly and that "negligence" more clearly denotes a breach of duty on the part of the entity, while contribution is overly broad.

Response 1: The EPA disagrees with the commenter regarding the use of a “negligence” standard for determining whether an entity has been responsive during the permitting process. Negligence has a legal connotation of a failure to behave with a level of care that a reasonable person would have exercised under the same circumstances. The commenter’s suggestion lacked detail and was vague in the context of how the use of a negligence standard would apply to the permitting process, whereas contribution to the delay is established in the rule. Accordingly, the EPA is not using the term “negligence” in this case because the agency expects that a contribution standard will be clearer to implement and to understand. In the final rule, as discussed in section II.D.1. of the preamble to the final rule and in the response to comment 1 in section 4, the WEC obligated party seeking to exempt a portion of its facility applicable emissions from a WEC applicable facility must not have contributed to the delay. Therefore, the WEC obligated party must be responsive to requests for information regarding the permit application (within 30 days or other timeframe as agreed to by the permitting authority) and not be a plaintiff in litigation regarding the permit application. Furthermore, 40 CFR 99.30(c) is not intended to be exhaustive in that there may be other ways a WEC obligated party could contribute to a permitting delay (*e.g.*, placing an application on hold for an extended period of time).

4.1.7 Eligibility for delays due to litigation

Comment 1: Commenters (0180, 0221, 0283) expressed the position that delays associated with litigation should not be found ineligible for the exemption. Commenter 0283 stated that CAA section 136(f)(5) does not specify who or what must cause a delay, but merely that such delays be unreasonable and that if third party litigation prevents the granting of a permit for a pipeline that will reduce emissions, such litigation should be considered. Commenter 0283 further noted that litigation could take different forms including: a preliminary injunction blocking a permit, a final judgment that a permit is deficient that vacates a permit, and/or a remand to an agency for

further action. All of such litigation-related delays are outside the control of the permit applicant and the WEC obligated party and could constitute an unreasonable delay within the meaning of the statute.

Commenters (0180, 0221) stated the exemption should be based on whether the WEC obligated party is not able to improve their gathering, processing, or transmission infrastructure due to deliberate inaction by regulatory authorities, lawsuits filed by environmental groups or other circumstances beyond their control. Commenters provided the example of the Sandwash Pipeline project that faced lengthy permitting delays due to regulatory agency inaction.

Response 1: The EPA acknowledges the commenters' concerns. After review of the comments received, the final provisions clarify that the party seeking the exemption (WEC obligated party) cannot have contributed to the delay, including being a plaintiff in litigation related to the permit application. The WEC obligated party, if they are the entity seeking the environmental permit, must also have been responsive to the permitting authority's request for information. Therefore, if a third-party litigates the permitting action, that would not be grounds to exclude the entity from qualifying for the exemption for unreasonable environmental permitting delay.

Comment 2: Commenters (0335, 0936) urged the EPA to finalize an exemption which is evaluated on a case-by-case basis that does not consider any litigation related delays.

Response 2: The EPA disagrees in part with the commenters and refers the commenters to section II.D.1.a. of the preamble to the final rule and the response to comment 1 of section 4.

Comment 3: Commenter 0530 stated support for the EPA to have the right to decide whether a company in litigation can delay addressing an active leak because of litigation.

Response 3: The EPA acknowledges the comment and refers the commenter to section II.D.1.a. of the preamble to the final rule and the response to comment 1 of section 4.

4.1.8 Alternative case-specific approach

Comment 1: Commenter 0229 suggested the statute contemplates a case-by-case approach. They supported their statement with two court cases: *Fruit Indus. v. Bisceglia Bros. Corp.*, 101 F.2d 752, 754 (3d Cir. 1939) ("No arbitrary rule can be stated with reference to the time which will constitute an unreasonable delay."); *Ahmadi v. Chertoff*, 522 F. Supp. 2d 816, 822 (N.D. Tex. 2007) (explaining that unreasonable delay "depends to a great extent on the facts of the particular case").

The commenter notes that unreasonable is not necessarily a temporal descriptor and that a delay could be unreasonable simply because it was absurd or unfair. The commenter suggested that the EPA could arbitrarily hold onto an application for 41 months and then grant it just before the deadline and that would be considered reasonable under the Proposed Rule.

Response 1: The EPA decided against using a case-by-case approach for several reasons. Reviews of the individual circumstances of each situation would run counter to Congressional intent because facilities would be unable to predict what they owe, take action to limit any applicable charge, or settle their WEC obligation in a timely manner, potentially leading to payments that were later found subject to this exemption. The finalized approach means that payments are more likely to align with amounts owed, including applicable exemptions, and thus more closely track the purpose for which Congress included this exemption. A case-by-case approach would also create a significant time and resource burden for both regulated 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 review process would result in uncertainty for industry and could lead to a significant backlog, thus making the annual calculation of the WEC obligation unduly burdensome. In addition, case-by-case decision making would require repeated exercise of judgment, which could lead to inconsistent results and protracted disputes, interfering with the Congressional purpose in including this exemption. In order to ensure that the unreasonable delay exemption can be administered in an efficient manner, and to provide industry with clear and predictable requirements that must be met to receive this exemption, the EPA is finalizing the proposed approach of utilizing four set criteria to evaluate eligibility for the unreasonable delay exemption. We refer the commenter to the discussion found in section II.D.1.a. of the preamble to the final rule for more details.

Comment 2: Commenter 0905 suggested that at a minimum the EPA should offer a case-by-case alternative to the EPA's proposed brightline criteria. The commenter stated that a single pipeline project may require several environmental permits from various Federal, state, and local agencies with different processes and timelines. They noted that these permitting actions may occur in parallel or in sequence and that an unreasonable delay for a prerequisite permit would delay a project even if subsequent permits are issued in a timely fashion. The commenter used the example of New Source Review and Title V air permits. The commenter requested that the EPA allow companies apply for a case-by case exemption for an individual site up to an entire basin, as an unreasonable delay for a pipeline mainline could affect hundreds to thousands of production sites in a basin while a delay for a connecting line may only impact a handful of sites.

To further support a case-by-case approach, the commenter further noted that timelines vary by agency. As an example, the Texas Commission on Environmental Quality has published air permit targets of 45 days to 12 months. Commenter recognized that other agencies may have longer timeframes. Another example the commenter provided was right-of-way (ROW) approvals for the Bureau of Land Management (BLM). The commenter stated ROW is required for every project on public land and that after initial evaluation, BLM notifies the applicant whether the application can be processed within 60 days.

Response 2: The EPA disagrees with the commenter’s suggestion that the EPA utilize a case-by-case approach to determining when an unreasonable delay in environmental permitting has occurred. The EPA refers the commenter to the response to comment 1 of section 4.1.8 and to section II.D.1.a. of the preamble to the final rule for our rationale. The EPA recognizes the complexity of the multi-state projects and the permitting involved. We also recognize that

permitting authorities work closely with permit applicants to achieve reviews in shorter timeframes in the majority of situations. The timeframe of 36 months does not imply an expected timeline for conducting permitting reviews. It also is not meant to create or supersede statutory review goals or is it in any way meant to extend permit reviews. Rather, the 36-month timeframe is meant to recognize when an environmental permit review is taking that long, that is an unusual situation and should be recognized as such, making the situation eligible for the exemption if the other criteria are also met. We believe that exemptions under this provision are exceptions to the rule, not routine.

Comment 3: Commenter 0293 slightly favored a case-by-case approach for determining whether an unreasonable delay in permitting has occurred but recognized that such an approach could place additional burdens on facilities and create an annual influx of determinations for the EPA to review and act on within a reasonable timeframe. The commenter was concerned that a case-by-case approach would be used with subjective metrics and encouraged the EPA to be more specific about expectations for owners/operators, establish rigid and defined bounds within which the exemption applies and make updated proposals available for public comment prior to implementation of the WEC.

Response 3: The EPA acknowledges the concerns raised with regard to using a case-by-case approach. The EPA refers the commenter to the response to comment 1 of section 4.1.8 and to section II.D.1.a. of the preamble to the final rule for our rationale for finalizing an approach that utilizes four set criteria to evaluate eligibility, including the 36-month timeframe.

Comment 4: Commenters (0268, 0278) urged the EPA to develop a case-by-case approach. Commenter 0268 stated the brightline criteria are inappropriate and impractical, while Commenter 0278 stated that setting an established timeframe will not account for the various situations that occur in a permitting process and are not reasonable or appropriate in all situations and will significantly and unnecessarily increase the WEC on an obligated party.

Similarly, Commenters (0335, 0530, 0703, 0936) emphasized the need for the permitting delay exemption to only be granted on a case-by-case basis. Commenters expressed that operators should demonstrate the absolute need of a requested gathering or transmission pipeline for gas offtake and provide evidence that there are no other means of gas rerouting or on-site usage before being allowed to flare the gas. Commenter 0936 added that operators should also demonstrate that storage is not feasible as well.

Response 4: The EPA disagrees with the commenter with suggesting that the EPA utilize a case-by-case approach to determining when an unreasonable delay in environmental permitting has occurred. The EPA refers the commenter to the response to comment 1 of section 4.1.8 and to section II.D.1.a. of the preamble to the final rule for our rationale. The EPA notes the commenters did not provide any data or examples to support their position to meaningfully respond.

The EPA acknowledges the concern raised by the commenters that operators should demonstrate a need of a requested gathering or transmission pipeline for gas offtake and provide evidence that

there are no other means of gas rerouting or on-site usage. The EPA is finalizing a revised list of emissions sources that are eligible for the exemption to align the WEC rule more closely with the 2024 NSPS/EG rule, specifically: the use of gas as an onsite fuel source, gas used for another useful purpose that an otherwise purchased fuel or raw material would have served, gas reinjected into a well, and flaring of gas. We believe by allowing for other uses of gas and petroleum to be exempted, entities will be encouraged to find other uses rather than flaring.

4.1.9 Additional criteria

Comment 1: Commenters (0292, 0530, 0936) suggested that an additional criterion be added where the entity must demonstrate that flaring is a last resort after exploring all other options for beneficial use and gas reinjection. Commenter 0530 added gas rerouting, on-site gas usage and gas storage. Commenter 0292 suggested that this criterion be certified by a professional engineer or other qualified personnel. They further recommended that the entity require a demonstration that flaring reduces methane emissions by at least 95.0 percent.

Response 1: The EPA acknowledges the suggestion made by the commenters. As described in the response to comment 1 in section 4 and section II.D.1.a. of the preamble to the final rule, the EPA has added additional uses. Submittals are certified by designated representatives for the WEC obligated parties. However, as part of the third-party auditing program, we have added a requirement to use a qualified professional engineer. The expectation is that in the event an audit is done because the EPA is unable to verify the WEC filing, the qualified professional engineer will independently review all records and other information necessary to verify information. Information that must be made available to the auditor(s) is outlined in 40 CFR 99.8(c)(1)(v) and includes information submitted pertaining to exemptions.

4.2 Reporting and Recordkeeping Requirements

Comment 1: Commenter 0327 suggested the EPA make targeted adjustments to the proposed recordkeeping and reporting requirements to allow the EPA to request any other information deemed relevant to determine eligibility. As an example, new infrastructure may not be necessary for offtake increased volumes where there is sufficient existing capacity. The commenter suggested the EPA should request records relevant to existing capacity when considering an exemption application and to assure that the exemption applies only to the specific wellhead(s) platforms that would be directly connected to the infrastructure. The following language was provided:

40 CFR 99.31(b)(11) Any other documentation deemed relevant by the Administrator for determining eligibility.

Response 1: The EPA acknowledges the suggestion made by the commenter and has incorporated it into the final rule at 40 CFR 99.31(b)(13).

Comment 2: Commenter 0905 offered several suggested changes to the reporting and recordkeeping requirements associated with the unreasonable delay exemption:

- Attestations should only be made for actions under the control of the entity making that attestation. The attestation requested in 40 CFR 99.31(b)(4) cannot be made by the entity seeking the exemption is if it a different entity from the one seeking the permit.
- A listing of the methane mitigating activities in 40 CFR 99.31(b)(5)(ii) is only meaningful if the EPA expands the scope of exempted emissions beyond flaring.
- The information requested in 40 CFR 99.32(b)(10) should be limited to a certification statement to that limited to environmental regulations.
- Records proposed in 40 CFR 99.33(a) regarding permit application and correspondence should only be required for the entity seeking the permit.
- Information on whether the facility's response included modification to the permit modification as proposed in 40 CFR 99.33(a)(3) imply that a technical update to the application would make the application incomplete, which are routine in the review process and do not necessarily "restart the clock" on determining if an unreasonable delay has occurred.

Response 2: The EPA would like to clarify for the commenter that 40 CFR 99.31(b) requires the WEC obligated party to report the information in the subsequent paragraphs. The EPA notes that 40 CFR 99.31(b)(4) used the term attestation at proposal, but is finalizing use of the term "certification". The certification in 40 CFR 99.31(b)(4) is only required by the WEC obligated party to assure they are not contributing to the delay by 1) if they are the permit applicant, they must have been responsive and 2) not have been a plaintiff in litigation related to the permit. Relatedly, we confirm that records related to the permit application, including correspondence are only required by the entity seeking the permit.

As suggested by the commenter, the EPA has finalized 40 CFR 99.31(b)(5) to expand the scope of the exempted emissions as discussed in the response to comment 1 of section 4 and in section II.D.1.a. of the preamble to the final rule. The EPA understands there is a continuous exchange of information throughout the permitting process, and that the submittal of technical information does not necessarily cause an application to be deemed incomplete. We believe that such decisions are best made by the permitting authority. The intent of 40 CFR 99.33(a)(3) is meant to indicate whether the information submitted was responsive to the permitting authority's request.

Comment 3: Commenter 0278 requested that the EPA remove any requested information to be reported by a WEC obligated party that is not under its direct control or that it cannot attest to with any certainty as they may not have access to or be able to certify if the information is under or within the control of another entity.

Response 3: The EPA acknowledges the commenter's concern. We have finalized the rule such that only the entity requesting the exemption is responsible for certifying to the information submitted. If the entity is not the permit applicant but was required by the permitting authority to provide information to inform the permitting decision-making process, then the entity must certify to being responsive pursuant to the requirements of 40 CFR 99.30(c).

5 Regulatory Compliance Exemption

Timing for the Administrator's Regulatory Compliance Exemption Determinations Finalized Approach: State by State

Comment 1: Several commenters (0180, 0204, 0212, 0216, 0221, 0229, 0230, 0237, 0239, 0240, 0267, 0273, 0270, 0276, 0278, 0279, 0282, 0283, 0284, 0285, 0287, 0289, 0293, 0298, 0299, 0905) disagreed with the EPA's proposed approach to the regulatory compliance exemption and specifically argued that the exemption should be made available on a state-by-state basis.

Commenters (0216, 0229, 0230, 0270, 0287, 0289, 0298) emphasized that the EPA should recognize the modifying language in CAA section 136(f)(6)(A)(i) that plans must be "approved and are in effect in all States with respect to the applicable facilities." Commenters suggested that the EPA already understands that the phrase "with respect to the applicable facilities" gives it leeway to approve a state plan and make a determination of equivalency for that state plan even if plans are not in place in states that do not currently contain WEC applicable facilities. Therefore, consistent with that logic, it flows that the phrase should be interpreted to mean the applicable facilities to which the exemption would apply, *i.e.* there is a plan in place where the facility seeking the exemption exists. Commenter 0298 stated that as a practical matter, the EPA has written the exemption out of the statute, exceeding its authority under the CAA.[14] (Commenter 0298 also used *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc*., 467 U.S. 837, 842–43 (1984) ("If the intent of Congress is clear [with respect to statutory interpretation], that is the end of the matter; for the . . . agency[] must give effect to the unambiguously expressed intent of Congress.") to further emphasize its point.

Similarly, commenters (0212, 0239, 0283, 0299) stated that the EPA has misconstrued the phrase "in all states with respect to the applicable facilities" in CAA section 136. Commenter 0283 stated their position that the phrase refers to multiple subpart W facilities that extend across state boundaries. As an example, they thought a more reasonable construction of the statute would be that if a subpart W reporting facility operates in states A and B, but only state A has an approved plan, the portion that operates in state B would not be eligible for the exemption. Commenter 0279 suggested a similar approach, but instead believed that all state plans within a basin[3] should be approved prior to a facility becoming eligible for the exemption. Commenter 0212 suggested that the EPA's rationale for the proposal could have no other purpose than to prevent the exemption from being used and compel higher taxes on companies that are reducing methane emissions and complying with the regulations.

Commenter 0239 stated the statutory language does not require the EPA to wait for all states that happen to have any applicable facilities to have approved plans in effect. Instead, they believed it is clear that the exemption is to be made available to all applicable facilities within a particular state once that state has an approved plan in effect.

Commenter 0283 argued that Congress was speaking in general terms and that the EPA should not parse words in a vacuum. Specifically, the commenter stated that the provision "standards and plans pursuant to subsections (b) and (d) of CAA section 111 [that] have been approved and are in effect in all States with respect to the applicable facilities" must be put into the proper context because CAA section 111(b) and (d) regulate new and existing sources, respectively, which are mutually exclusive from one another--meaning a facility will not be subject to both simultaneously. The commenter 0283 then noted that the EPA approves state plans under CAA section 111(d)(1), but it does not "approve" its own, Federal plans under section 111(d)(2). The commenter stated they used these examples to point out that the EPA cannot plausibly claim to merely be implementing the statute's plain text, but instead, it is making interpretive choices.

Commenter 0299 asserted that the proposed rule violates the "basic interpretive canon" that "a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." The commenter cited *Corley v. United States*, 556 U.S. 303, 314 (2009) as the source of quotations and support for this position. Commenter 0279 stated that as proposed, the exemption would not be available to operators for several years, counter to the IRA. Commenter 0216 suggested that as primary enforcers of the CAA, the EPA withdraw the proposal and work with its state partners to develop a legal solution.

Commenter 0221 acknowledged that a state-by-state approval could lead to a different WEC requirements for the same owner or operator in different states, but this appears to be an acceptable risk with the increased incentive to have the exemption viable in some states rather than none should the plan(s) in a few states be revoked due to legal challenges. Commenter 0221 supports the EPA's proposal to make both required determinations via a single administrative action, however the commenter recommends that it be done on a state-by-state basis, rather than on a national scale, so as to not penalize WEC obligated parties operating in states who are able to submit approvable plans sooner. Commenter 0239 described that Congress directly addressed and clearly outlined the parameters for the regulatory compliance exemption in the IRA-amended CAA and explains in the statute that the WEC "shall not be imposed . . . on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to" CAA sections 111(b) and (d) provided the EPA first makes two determinations: (1) "methane emissions standards and plans pursuant to [CAA section 111(b) and (d)] have been approved and are in effect in all States with respect to the applicable facilities," and (2) compliance with the requirements "will result in equivalent or greater emissions reductions as would be achieved by" the initial 2021 proposal for the Methane Rule, "if such rule had been finalized and implemented."

Commenter 0206 stated that the EPA misconstrued CAA section 136(f)(6). Commenter 0206 said the EPA inserted language requiring state plans that "will result in equivalent or greater emissions reductions on a nationwide basis as would be achieved by the proposed rule..." The commenter asserted that the law was intended to be approved in all states applicable to the facility. The commenter stated it the law was clear and unambiguous that if a single facility spans more than one state then all of the states the facility is located in must have plans

approved. Commenter 0206 expressed concern that with the insertion of the phrase "on a nationwide" basis it appears the EPA intended to withhold the exemption from qualified facilities unless all states in the nation have approved plans. The commenter noted a belief that this could unfairly penalize facilities in states that undertake the immense amount of work necessary to get a state plan approved. They also expressed concerns about the potential for this to be used by states who are opposed to oil and gas development by intentionally delaying the development of a state plan for as long as possible so as to force operators to pay the WEC for as long as possible imposing potentially significant cost on the oil and gas industry. The commenter requested the EPA return to the plain language of the law and amend this section to make it clear that only states in which the facility is located must have approved plans.

Some commenters (0270, 0285) provided policy arguments for making the regulatory compliance exemption available on a state-by-state basis. These commenters expressed concern that withholding the exemption from qualified facilities unless all states in the nation have approved plans unfairly penalizes facilities in states that undertake the work necessary to get a state plan approved. The commenters stated that states who are opposed to oil and gas operations may intentionally delay the development of a state plan for as long as possible, causing those operations to pay the WEC for as long as possible, imposing increased costs on the industry.

Commenter (0180, 0221,0278) also argued that WEC obligated parties in states with approved plans should not be penalized for the failure of one or more states to prepare plans. Relatedly, commenter 0283 also asserted the proposal is self-contradictory and therefore is arbitrary and capricious because it does not incentivize states to develop 111(d) plans or for the EPA to develop a Federal plan.

Commenters (0199, 0208, 0276, 0905) argued that if the EPA did not employ a state-by-state approach to the regulatory compliance exemption, the exemption would not be available to any state for regulatory compliance exemption for at least three years. Commenter 0905 noted it was unlikely to be available in three years given the "all states" approach proposed. Commenter 0905 claimed the "all states" approach unreasonably ties the states together in a way that prevents states from determining their own fates, as 111(d) contemplates. Commenter 0240 encouraged the EPA to outline a path and timeline for the exemption to become effective that does not require all 50 states to have approved plans prior to being available.

Commenter 0290 stated that implementation history shows that state plan approvals are fraught with delays due to technical or legal issues or staffing quandaries such as the capacity of a state to complete all its obligations on a timely basis. The commenter suggested it would be likely several years longer than the five-year schedule envisioned by the EPA. In addition, even if all plans are approved and in effect, the exemption could be eliminated by a single plan being challenged and disapproved in whole or in part. Such a schedule would result in an outcome that essentially makes this exemption a meaningless aspect of the WEC program.

Commenter 0288 believed that the exemption would not be available for at least 3-5 years. They suggested the exemption should be available to facilities upon implementation of WEC. Until

then, Commenter 0288 suggested the EPA stay the WEC until the compliance exemption is available or provide an equivalent exemption until the OOOOc exemption is available.

Commenters (0193, 0199, 0202, 0208, 0268, 0291, 0298, 0905) urged the EPA to not wait until all state or Federal OOOOc plans are adopted to establish the availability of the regulatory compliance exemption. The commenters believed that a state-by-state approach is more aligned with Congress's intent than the current proposal and will ensure efficiency in the plan development process, further incentivize operators' compliance with OOOOc, and ensure more operators are eligible for the exemption. Commenter 0905 asserted the applicability of the exemption should be determined on a facility-by-facility basis and that a facility should qualify as long as programs are "approved and in effect" for that particular facility.

Commenters (0169, 0279) expressed concerns with the EPA's proposed framework to require Section 111(d) plans to be in place before any operator could avail themselves of the regulatory compliance exemption. Commenter 0279 suggested the EPA jettison the approach and re-frame applicability.

Commenter 0298 suggested that any other approach to the exemption might raise due process concerns given that incorrectly asserting the exemption could open WEC obligated parties up to enforcement risks.

Response 1: The EPA acknowledges the commenters' concerns. After consideration of all the comments received, the EPA has finalized changes from the proposal to better align the regulatory compliance exemption with Congressional objectives and the best reading of the statute. The EPA's rationale for the finalized approach to the regulatory compliance exemption is discussed at section II.D.2.a. of the preamble. As explained in the preamble, the EPA is finalizing an approach where the Administrator will proceed in a state-by-state manner to make determinations that 1) methane emissions standards and plans pursuant to subsections (b) and (d) of CAA section 111 have been and are in effect in all States with respect to the applicable facilities and 2) compliance with the requirements of such plans will result in equivalent or greater emissions reductions as would be achieved by the 2021 NSPS/EG Proposal. The concerns raised by commenters regarding the effect of one state or Tribal land's plan approvability and timing on another is resolved through using this approach. Furthermore, we believe that through implementing a state-by-state approach, states and tribes will have an incentive to prepare approvable EG OOOOc-implementing 111(d) plans to encourage methane emissions reductions to provide an avenue for WEC obligated parties to mitigate WEC obligations.

Lastly, the EPA disagrees with commenter's argument that the proposal should be withdrawn. The commenter did not provide specific rationale why the rule should not proceed to finalization through the notice and comment process. For the EPA's complete discussion behind its decision to finalize a state-by-state approach, see section II.D.2. of the preamble to the final rule.

Proposed Approach: All States

Comment 2: Other commenters (0149, 0153, 0154, 0155, 0157, 0160, 0161, 0163, 0165, 0174, 0181, 0184, 0188, 0201, 0292, 0327, 0335, 0703, 0936) argued in favor of using the approach to make the regulatory compliance exemption only available after the final standards are approved and in effect in all states as proposed. Commenter 0327 stated the EPA's proposed approach was consistent with Congressional intent, providing as evidence a floor statement by House Committee on Energy and Commerce Chairman Frank Pallone Jr.

Commenter 0327 supported the EPA's proposed approach to wait to make the exemption available when both (1) emission standards for new sources under section 111(b) are promulgated and in effect, and (2) plans for existing sources under section 111(d) have been approved by the EPA and are in effect in all states. Commenter 0327 offered several arguments against the "state-by-state" approach. Commenter 0327 supported the EPA's proposed reading of the statute, meaning that "all states" is every state. They argued in situations where facilities span multiple states, plans would have to be in effect in all states the facility spanned for the exemption to be available.

Commenter 0327 stated that the statute should be viewed as a whole and not in isolation. Commenter noted that when the EPA proposed the Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review on November 15, 2021 (86 FR 63110) (hereafter referred to as the proposed November 2021 rule), the EPA provided emission reduction projections, which can be used as a reasonable comparison to the March 2024 rule under an "all states" approach, which is contrary to a state-by-state approach. Commenter stated that CAA section 136(f)(6)(A) and (B) contemplate and require one determination based on two findings in CAA section 136(f)(A)(i) and (ii). Otherwise, multiple determinations for each state or each facility would be required. Commenter suggested that a different interpretation would result in the EPA needing to make a nationwide determination that the section 111(b) standards were in effect in all states before going on to make individualized determinations for the section 111(d) plans state by state. Commenter stated that this was a more complex approach not envisioned by the statute. Commenter noted that section 111(d) "standards and plans" cannot be approved and in effect only in a single state. They stated the use of the term "plans" connotes a nationwide approach. And, section 111(b) standards, which are referred to alongside section 111(d) plans throughout section 136(f)(6)(A), are nationwide standards that by definition cannot be in effect in only some states.

Commenter 0327 asserted the Legislative history supports their position against a state-by-state approach. They excerpted a portion of Representative Frank Pallone's (D-NJ) floor speech:

"....The basis for this exemption will be a determination by the EPA Administrator that certain conditions are met before any applicable facility may qualify. First, the EPA Administrator must determine that CAA sections 111(b) and 111(d) methane emission standards are in effect in all States where applicable facilities are located. Second, the EPA CAA 111(b) and 111(d) methane emissions standards must be finalized and in effect, and the Administrator must determine that those final standards will result in equivalent or greater reductions than the EPA's proposed methane standards. Once the Administrator makes the appropriate determination, the exemption

may be applied to any applicable facility subject to and compliant with methane standards pursuant to CAA Section 111. If any condition is not met after the Administrator has made the determination, applicable facilities will no longer qualify for the exemption and will again be subject to the charge....Notably, the collective emissions from new or existing sources at an applicable oil and gas facility may be subject to a mix of standards under CAA sections 111(b) and 111(d). Therefore, to qualify for the exemption, any new sources at the applicable facility should be in compliance with any applicable new source standards, and any existing sources located at the applicable facility should be in compliance with any applicable standards in a plan effective under Section 111(d)."[62]

Commenter 0327 stated that Representative Pallone's speech describes the exemption as being available for any applicable facility anywhere in the country following "a determination" by the EPA that the exemption is available, and the facility is in compliance. They suggested the singular use of determination can only square with the "all states" approach and the qualifier of "with respect to the applicable facilities" is meant to convey that not all states may have applicable oil and gas facilities.

Commenter 0327 suggested a state-by-state approach would lead to absurd results and cause significant practical difficulties for the EPA. They offered examples to support their position. One example was production facilities in the Anadarko Basin, which as defined under subpart W, covers Texas, Oklahoma, Colorado, and Kansas. These facilities could span anywhere between one and four states, meaning the EPA would need to evaluate each facility individually to determine if the exemption could be available to it based on 1) which states it spanned and 2) the status of section 111(d) plans in each of those states. Because each state could have a different plan status at any given time, facilities could be faced with strange situations and the EPA would need to continually assess whether the exemption should be available. An example such as a production facility covering two states, where a majority of that facility's sites are in a state with a plan that has been approved and is in effect while only one of the facility's sites are in a state without an approved plan. This facility would not qualify for the exemption and apportioning emissions to various portions of facilities would be unworkable. Commenter 0327 offered another example where Oklahoma, Colorado, and Kansas have plans approved and in effect, but Texas does not. In that case, certain facilities in the Anadarko Basin could be exempt while others would not be. It is also possible that facilities could have different compliance status in different states, further complicating the analysis of whether the exemption is available and can be exercised by them or not. Commenter 0327 concluded that these scenarios could occur under a state-by-state approach but not an all-state approach, do not comport with Congress's intent.

Commenters (0149, 0163, 0165, 0327) supported a timeline where the regulatory compliance exemption only become available after final standards and plans are in effect in all states and that the 111(d) plans to be at least as strong as the EPA's 2021 methane emissions proposal.

Response 2: After consideration of all the comments received, the EPA has finalized changes from the proposal to better align the regulatory compliance exemption with Congressional objectives through a best reading of the statute. The EPA's rationale for the finalized approach to

the regulatory compliance exemption is discussed at section II.D.2.a. of the preamble to the final rule. As explained in the preamble, the EPA is finalizing an approach that will make the regulatory compliance exemption available on a state-by-state basis after each plan pursuant to CAA section 111(d) is approved and in effect.

To align the equivalency determination with the state-by-state approach, the EPA also is finalizing a timeline, whereby the equivalency will be conducted on a state level basis for the both the NSPS and plans implementing OOOOc once the plan implementing OOOOc is approved. The EPA will provide complete details of the equivalency determination in a subsequent action.

Regarding the comment that the EPA would have to make a nationwide determination that 111(b) standards are in effect in all states, the EPA clarifies that the CAA section 111(b) standards apply nationwide, without a state-by-state adoption process. States may accept delegation in order to implement and enforce the regulations and to incorporate such requirements into permits as being enforceable by the EPA, the state/tribe, or both. The only reason a section 111(b) regulation would not be effective in any state would be if the rules were stayed or rescinded due to litigation.

Regarding the timeline for reviewing and approving state/Tribal plans submitted pursuant to CAA section 111(d), as discussed in Response 8 in section 5 of this document, OOOOc provides the timelines for submittal of state/Tribal plans and it is not impacted by the Administrator's determinations conducted under CAA section 136(f)(6).

Regarding comment that a state-by-state approach would lead to absurd results and cause practical difficulties for facilities that span multiple states, the EPA disagrees. Refer to sections II.D.2.b., II.D,2.h., and II.D.2.i. of the preamble to final rule for discussion of how the finalized rule applies to these facilities. For a WEC applicable facility in an industry segment that is defined at the basin level in subpart W, the exemption will be available when the final compliance date applicable to the WEC applicable facility has passed for all states in which the facility is located. For purposes of implementation of the regulatory compliance exemption in this final rule, a WEC applicable facility in the onshore production or gathering and boosting industry segment is considered to be located in each state or Tribal lands that a well-pad site or gathering and boosting site, as applicable, was reported to subpart W for the reporting year. As explained in section II.D.2.a. of the preamble to the final rule, the EPA is finalizing a state-by-state approach based upon the conclusion that the best interpretation of the phrase "all states with respect to the applicable facilities" in CAA section 136(f)(6)(A)(i) means that the determination is to be made for each state individually, and that state plans must be approved and in effect for all states in which a WEC applicable facility claiming the exemption is located. The EPA acknowledges that this approach leads to potential differences in the availability for exemption for facilities located in the same multistate basin, such as the Anadarko Basin, based upon the particular state(s) a facility is located in but finds no indication that this is in conflict with Congressional intent.

Comment 3: Some commenters (0155, 0181, 0335, 0936) agreed with the EPA's proposal that facilities must demonstrate full compliance to qualify for the exemption. Commenter 0201 stated there should be transparency and accountability.

Response 3: Regarding how compliance will be determined for a facility which wishes to avail itself of the regulatory compliance exemption, after consideration of the comments received, the EPA is making several changes to the conditions associated with when and how the regulatory compliance exemption may be lost. These changes are discussed in detail in sections II.D.2.a. through II.D.2.f. of the preamble to the final rule and to comment and responses found at section 5.6.2.

Comment 4: Commenter 0279 noted that the EPA's presumption the regulatory compliance exemption takes effect in 2027 is unlikely given the number of plans the EPA needs to review and approve, the complexity of the plans, the potential for RULOF demonstrations, the likelihood of unprovability, and the likelihood of litigation on the final WEC rule and/or state plans.

Response 4: In the Final Regulatory Impact Analysis (RIA), the EPA has updated the assumption that the regulatory compliance exemption will become available in 2029, compared to the assumption that it is available in 2027 as proposed. This assumption is made for analytical purposes. As finalized, the regulatory compliance exemption applies on a state-by-state basis and the availability of the regulatory compliance exemption will vary according to plan approval and implementation schedules.

Comment 5: Commenter 0271 requested that offshore facilities located on the Outer Continental Shelf (OCS) have the opportunity to take advantage of the regulatory compliance exemption. As proposed, such facilities cannot because they are not subject to Part 60 and plans in Part 62 do not apply to facilities west of the Air Quality Jurisdiction Line (87.5^0W).

Response 5: The EPA does not agree with this comment. The requirements for the regulatory compliance exemption are based on the statutory language of CAA section 136(f)(6)(A), which refers to compliance with sections 111(b) and (d) of the CAA. Air quality regulations for sources on the OCS are promulgated pursuant to section 328 of the CAA, and the EPA does not have the authority to expand the CAA section 136(f)(6) exemption beyond what Congress mandated.

Comment 6: Commenters (0276, 0240) argued that the EPA deviated from Congress's original intent with the proposed regulatory compliance exemption. Commenter 0276 alleged the EPA has no basis for its assumptions and conclusions that facilities subject to methane regulations will be above or below the WEC thresholds as well as compliance with NSPS OOOOb and Emission Guidelines (EG) OOOOc would likely result in a facility being below the WEC thresholds. Commenter 0276 stated that the fact that Congress established the regulatory compliance exemption indicates that Congress anticipated facilities to be above the WEC thresholds. Commenter 0276 requested the EPA withdraw such unfounded statements. Commenter 0276 expressed concern that some impacts from the proposed changes to subpart W for certain equipment that is not addressed by the NSPS OOOOb/EG OOOOc (see *e.g.*, use of pilot flame

monitoring data and flowback estimates) will be difficult to mitigate, resulting in operators being above the WEC threshold.

Response 6: The EPA disagrees with this comment. As discussed in section II.D.2. of the preamble to the proposed rule, the EPA did not assume nor conclude complying with the NSPS and/or the plans implementing OOOOc would necessarily result in facilities being below the WEC thresholds. As noted in the above section of the preamble, the EPA expects that for many facilities, compliance would result in emissions to be below the WEC thresholds; but the EPA acknowledged that there could be a different outcome for certain facilities. In cases where a facility is in compliance with the NSPS or the applicable plan implementing OOOOc, but still above the WEC thresholds, the regulatory compliance exemption would provide a shield from being subject to the charge under the WEC program.

The EPA refers the commenter to the final RIA[6] for the final subpart W amendments. The final subpart W rule includes emissions sources which do not have corresponding emissions reduction standards under the NSPS OOOOb or EG OOOOc. However, we note that WEC applicable facilities that have some sources without emissions reductions standards under NSPS OOOOb or EG OOOOc may qualify for the regulatory compliance exemption (after its availability) if they comply with the requirements in NSPS OOOOb or EG OOOOc, as applicable.

Comment 7: Commenter 0276 asserted that the proposed changes to subpart W will result in substantial increases in reported emissions, which will have consequences for WEC Applicable Facilities. Commenter asserted these emissions may be overestimated.

Response 7: This comment regards separate rulemakings and is beyond the scope of this rulemaking.

Comment 8: Commenter 0215 stated the exemption criteria based on compliance with NSPS OOOOc is problematic as no states will have submitted, or been approved for, their implementation plans by the time the Proposed Rule goes into effect.

Response 8: The timeline for the collection of fees is set by CAA section 136(g), which states that fees shall be imposed on emissions beginning with reporting year 2024. The timelines for submittal of state/Tribal plans pursuant to typically is set by the section 111(d) implementing standards at 40 CFR part 60 subpart Ba, which recently were amended, in relevant part, to address timing requirements which were vacated by the D.C. Circuit in *Am. Lung Ass'n v. EPA*[7], ("ALA decision"). However, in the final rule for EG OOOOc, the EPA superseded the subpart Ba timeline and established a timeline of 24 months (from promulgation of EG OOOOc) for the submittal of state/Tribal plans under EG OOOOc, only. The rationale for this timeline is explained in section XII*.E.*2 of the preamble to the final NSPS OOOOb and EG OOOOc[8] rules. Once submitted, pursuant to 40 CFR part 60 subpart Ba, the EPA has 60 days to determine whether the state plan is complete. After 60 days, the plan is automatically deemed complete.

[6] [Insert Citation]
[7] See 985 F.3d 914, 991. (D.C. Cir. 2021) (ALA).
[8] See 89 FR 17008.

The EPA has 12 months to take final action on a complete plan. Lastly, should a state fail to submit a complete plan, or the EPA disapproves a state plan, the EPA must issue a Federal plan within 12 months of the state's failure or the EPA's disapproval. While the EPA recognizes the gap between the first-year collection of fees under the WEC and the availability of the regulatory compliance exemption, that is a construct of the statutory language, and the EPA does not have the authority to change the timeline.

Comment 9: Commenter 0289 agreed with the EPA's interpretation of WEC as a bridge to full implementation of the final NSPS OOOOb and EG OOOOc rules by encouraging meaningful methane reductions in the near-term during plan development and providing exemptions from charges for facilities that are in compliance with NSPS OOOOb/EG OOOOc. Commenter 0289 also argued that the WEC charge is not intended to continue in perpetuity.

Response 9: The EPA notes that Congress did not establish a sunset date under CAA section 136. The EPA believes that it was the intent of Congress, in part, to create an incentivize for states/tribes to promptly adopt and implement 111(d) plans to reduce emissions from existing oil and gas facilities in their jurisdictions. We further believe Congress intended for industry to be encouraged to adopt cost-effective, readily available technologies in an accelerated manner to reduce methane, thereby reducing their WEC obligation before the regulatory compliance exemption becomes available (a "bridge"). However, the EPA also understands that the WEC is intended to remain in place as a backstop to incentivize ongoing emissions reductions in the event that the requirements of the regulatory compliance exemption cease to apply. See Response 10 in this section for a discussion of what the EPA's intent was regarding the use of the term "bridge."

Comment 10: Commenter 0276 questioned the EPA's interpretation of the purpose of WEC and the regulatory compliance exemption. First, they questioned the EPA's interpretation that WEC acts as a bridge to full implementation of NSPS OOOOb/c by encouraging methane reductions in the near term while state plans are being developed and encouraging timely implementation of SIPs and FIPs. Then, the commenter stated that EPA erroneously concludes that no one may take advantage of the exemption until all plans are approved by the EPA and the EPA must wait until all plans are approved prior to making an equivalency determination as to whether said plans will achieve reductions equivalent to the November 2021 proposal. The commenter asserted that the exemption from the fee was clearly intended to reward and incentivize compliance with the regulations. the commenter stated that the EPA provides no legislative history to support its position, but rather the legislative history provides that WEC is intended to reduce methane emissions, create a clean energy technology bank, and fund wildlife resiliency efforts and clean energy infrastructure (168 Cong. Rec. H7577-02 (2022)). The commenter stated that nothing in the legislative history suggests that WEC was intended to address gaps in timing of finalization of NSPS OOOOb/c plans. The commenter suggested that if Congress meant for it to be a bridge, Congress would have eliminated it upon finalization of said plans and that the EPA's interpretation of the exemption works against it being a bridge. If no states' facilities may benefit from the exemption until all plans have been adopted and approved, there is no incentive for states to act quickly.

Commenter 0266 argued the WEC charge should remain in effect indefinitely. The commenter stated the WEC exists independently of section 111 rules. The commenter emphasized that the final rule should be clear that in perpetuity without the regulatory compliance exemption, facilities are subject to the Waste Emission Charge.

Response 10: After consideration of all the comments received, the EPA has finalized changes from the proposal to better align the regulatory compliance exemption with Congressional objectives and the best reading of the statute. The EPA's rationale for the finalized approach to the regulatory compliance exemption is discussed at section II.D.2.a. of the preamble. As explained in the preamble, the EPA is finalizing an approach that will make the regulatory compliance exemption available on a state-by-state basis after each plan pursuant to CAA section 111(d) is approved and in effect. WEC applicable facilities located in a given state or states (or Tribal areas) will become eligible for the regulatory compliance exemption after the equivalency determination has been made for the state(s) (or Tribal areas) in which the facility is located and at the point in time when the WEC applicable facility is subject to and in compliance with the requirements in the final NSPS OOOOb and applicable EG OOOOc-implementing 111(d) plan(s) – that is, when WEC applicable facilities must be complying with the methane requirements.

Regarding the commenters' arguments regarding the EPA's reference to the WEC as a "bridge" to implementation of NSPS OOOOb and applicable EG OOOOc-implementing plans, the EPA notes that the agency believes that it was the intent of Congress, in part, to create an incentivize for states/tribes to promptly adopt and implement 111(d) plans to reduce emissions from existing oil and gas facilities in their jurisdictions. The EPA further believes Congress intended for industry to be encouraged to adopt cost-effective, readily available technologies in an accelerated manner to reduce methane, thereby reducing their WEC obligation before the regulatory compliance exemption becomes available (a "bridge"). In addition to these functions of the WEC, however, the EPA agrees with the commenter that the WEC is intended to remain in place as a backstop to incentivize ongoing emissions reductions in the event that the requirements of the regulatory compliance exemption cease to apply.

Comment 11: Commenter 0897 provided a link to an article from a legal analyst suggesting that the EPA's interpretation of the WEC exemption has rendered it moot. The article was linked at: https://www.jdsupra.com/legalnews/the-epa-s-methane-waste-emission-charge-4606225/.

Response 11: The article cited provides a general overview of the WEC. The EPA has addressed the issues raised by this article in various sections of this Response to Comment Document, as well as in the preamble to the final rule. See in particular Section 1.1 (WEC Applicable Facility), Section 2.3 and Section 3 (Netting), Section 5 (Regulatory Compliance Exemption), and Section 4.1 (Permitting Delay Exemption).

5.1 Timing for Regulatory Compliance Determinations

Equivalency Determination

Comment 1: Commenters (0287, 0299) suggested the EPA need not wait until all states adopt approved plans to make a determination of equivalency. Commenter 0299 suggested the EPA can do so now since the only way for the EPA to approve CAA section 111(d)-implementing plans is if those plans comply with the recently finalized new source standards and existing source guidelines, which the EPA has already determined "do not reduce expected methane emission reductions relative to the" 2021 proposal. The commenter stated a facility would therefore be eligible for the regulatory compliance exemption as soon all states in which the facility is located have adopted approved plans. The EPA recognized that "this approach would be relatively simple to apply," but rejected it because "in practice, sources are not required to comply with the [emissions guidelines]" but "with standards later established in state or Federal plans." The commenter disagreed with the EPA's logic because compliance with the emissions guidelines is necessary for approval of state plans in all but the most extreme scenarios. The commenter suggested that any other reading turns the statutory incentive for states to implement their own plans on its head.

Similarly, commenter 0284 argued that the equivalency determination could be made promptly on a nationwide basis because subparts OOOOa/b apply nationwide as of promulgation, therefore, no additional state-level action is required for these requirements to be effective because they were promulgated under 42 U.S.C. 7411(b).

Similarly, commenters (0276, 0283, 0287) stated that the EPA was wrong to suggest that the statutory RULOF authority prevents the Agency from making an equivalency determination with respect to existing source plans until those plans are approved (for state plans) or promulgated (for Federal plans). Commenter 0276 stated that RULOF considerations would have been available to states (and mandatory for the EPA) under Section 111(d) "if [the November 2021 proposal had been finalized and implemented" in the same manner as those considerations are available to states (and mandatory for the EPA) now that the March 2024 final rule has been finalized and will be implemented. The commenter believed that Congress's contemplation of the finalization and implementation of the November 2021 proposal necessarily entails exercise of the statutorily available RULOF authority. Therefore, questions of RULOF are no barrier to the EPA making its equivalency determination now. Commenter 0287 stated that to evaluate the 2021 proposal, the EPA will necessarily have to make certain assumptions about the control measures that would have been included in state and/or Federal plans, but to make a like comparison, the EPA should make the same assumptions about the measures that will be included in plans adopted under the final rules. Commenter 0287 believed that waiting for plans to be submitted and in place to evaluate the impact of RULOF for the final 111 rules but ignoring RULOF for the 2021 proposal makes no sense from an analytical perspective and would be arbitrary and capricious.

Response 1: The EPA disagrees with this comment. See section II.D.2.d. of the preamble for the EPA's discussion of why equivalency determination must be based on a comparison of the 2021 proposal with the final NSPS and approved EG OOOOc-implementing plans. As discussed elsewhere in this document and in section II.D.2. of the preamble to the final rule, the EPA is finalizing a state-by-state determination process. Once a state or tribe has an approved EG

OOOOc-implementing plan , the EPA will make an equivalency determination for that jurisdiction. The EPA will undertake the equivalency determinations under future actions.

The EPA acknowledges that plans implementing EG OOOOc may include consideration of RULOF and refers the commenter to section II.D.2.d. for a discussion of how the EPA is considering RULOF in both the 2021 Oil & Gas Proposed Rule and in the 2024 Oil & Gas Final Rule.

As noted by the commenter, the NSPS OOOOa/b do apply nationwide. The EPA notes that in accordance with the NSPS OOOOa (at 40 CFR 60.5365a), affected facilities subject to OOOOa will at some point become subject to either an implementing plan under EG OOOOc or the NSPS OOOOb. The provision states the following:

> *"An affected facility must continue to comply with the requirements of this subpart until it begins complying with a more stringent requirement, that applies to the same affected facility, in an approved, and effective, state or Federal plan that implements subpart OOOOc of this part, or modifies or reconstructs after December 6, 2022, and thus becomes subject to subpart OOOOb of this part."*

Comment 2: Commenter 0284 pointed out that when states adopt and implement subpart OOOOc, they must receive an equivalency determination from the EPA that their existing source program is equivalent to the Federal program, therefore, the EPA can still make a determination at that time whether the contents of subpart OOOOc will result in equivalent or greater emissions reductions. Commenter suggested there is no practical difference resulting from state-level consideration of RULOF because those factors would have already been considered in implementing the November 2021 proposal if it had been implemented.

Commenter 0284 suggested that the EPA's proposed construct of the exemption is contrary to constitutional law and congressional intent.

Commenter 0284 stated:

- First, developing 111(d) plans may not be a priority issue for many states who are understaffed; and the EPA may not be able to step in to implement a Federal plan. The EPA often misses deadlines, forcing lawsuits to require action by date certain.
- Second, if the EPA relied on Chevon for its interpretation, it must be a reasonable implementation of congressional intent. Commenter suggested it is not reasonable to allow a single state to affect the availability of the exemption nationwide.
- Third, allowing a state to control the availability of the regulatory exemption nationwide by purposefully delaying a state plan implementing subpart OOOOc raised constitutional concerns about the equal footing of states. Simply by sitting on its hands, a state could affect the availability of an exemption across every other state, which would disrupt the "harmonious operation of the scheme upon which the Republic was organized," and would give a state authority over a national question of environmental and energy law, contrary to its constitutional authority.

The commenter suggested the EPA adopt a construction that would avoid that constitutional question.

Response 2: The EPA's final approach for the regulatory compliance exemption makes the exemption available at a state-by-state level, which addresses most of the commenter's concerns regarding the availability of the exemption. Regarding the commenter's contention that there is no practical difference resulting from state-level consideration of RULOF because those factors would have already been considered in implementing the November 2021 proposal if it had been implemented, the EPA refers the commenter to section II.D.2.d. of the preamble, which addresses consideration of RULOF in the context of the equivalency determination in detail. For a complete discussion of the EPA's reasoning behind this position, including a discussion of the points of comparison for the equivalency determination, and why the EPA must base the equivalency determination on the reductions achieved by approved EG OOOOc-implementing plans, see section II.D.2.d. of the preamble.

Comment 3: Similarly, commenter 0327 offered support for the regulatory compliance exemption being made available simultaneously for section 111(b) and (d) facilities for the statutory and practical reasons explained by the EPA. The commenter also stated the equivalency determination should be made on a year-by-year basis. Commenter 0327 was skeptical that final 111(d) plans could be deemed to achieve equivalent emissions reductions to the 2021 proposal in a particular year until the final plans require full compliance with the final standards.

Response 3: The EPA acknowledges the commenter's support for making the exemption available simultaneously to CAA section 111(b) and (d) facilities at the same time. The EPA does not agree that the equivalency determination needs to be made on a year-by-year basis. CAA section 136(f)(6)(A)(ii) does not state that the equivalency determination must evaluate emissions reductions on a year-by-year basis.

Comment 4: Commenter 0180 noted that some states may be able to demonstrate equivalent or greater emission reductions with their plans.

Response 4: As explained in II.D.2. of the preamble to the final rule, the EPA is finalizing a state-by-state determination process, and accordingly will make equivalency determinations on a state-by-state basis, comparing the 2021 proposal to the final NSPS and approved EG OOOOc-implementing plans.

Comment 5: Commenter 0284 argued that the state-by-state level approach would be most reasonable if the EPA does not adopt an approach where the equivalency determination is made promptly nationwide regarding subpart OOOOa/b as those rules were promulgated nationwide and as states adopt and implement subpart OOOOc because the state must receive an equivalency determination from the EPA as to whether the requirements are equivalent to the requirements of subpart OOOOc.

Response 5: The EPA is finalizing a state-by-state determination process, and accordingly will make the equivalency determination on a state-by-state basis, comparing the 2021 proposal to the

final NSPS and approved EG OOOOc-implementing plans. See II.D.2. of the preamble to the final rule for more detail.

5.1.1 Alternative approach of making equivalency determination for CAA section 111(b) affected facilities before making it for CAA section 111(d) designated facilities

Comment 1: Commenters (0239, 0276, 0284, 0289) supported the EPA making equivalency determinations for section 111(b) affected facilities before making them for section 111(d) designated facilities. Commenter 0276 requested the final rule and preamble be revised to reflect that the EPA makes equivalency determinations (particularly with respect to NSPS OOOOb) when the rule takes effect in May 2024. They stated in the November 2021 proposal, the EPA made certain projections as to the emissions reductions it projected would result from implementation of the proposal, and in the March 2024 final rule, the EPA issued updated versions of the projections. Its March 2024 projections exceed the November 2021 proposal projections, demonstrating that compliance with the final rule will meet the standard articulated at CAA Sec. 136(f)(6)(A)(ii). Commenter 0276 concluded the EPA therefore can and should make the equivalency determination now.

Commenter 0289 claimed that by providing the WEC exemption for facilities as soon as they are subject to and in compliance with NSPS OOOOb, regardless of EG OOOOc's implementation status, operators would be incentivized to devote resources to both compliance and to modifying older facilities to subject them to the new source performance standards, such that they could then be exempted from the WEC. Considering 42 U.S.C. 7436 is intended to be a methane emissions and waste reduction incentive program, commenter 0289 suggested that the EPA's interpretation for the WEC exemption is unreasonably removing any opportunity for incentives at every step.

Response 1: The EPA disagrees that it can make an equivalency determination for CAA section 111(b) facilities before making it for CAA section 111(d) facilities. See sections II.D.2.d. and II.D.2.e. of the preamble for an explanation of why doing so would be contrary to the statute, impracticable to implement, and serve no purpose given the statutory requirement that a determination covering both CAA section 111(b) and (d) facilities must be made before the exemption becomes available.

5.2 Timing of Regulatory Compliance Exemption Availability

Comment 1: Commenter 0185 remarked that as a small business, they should have the opportunity to reduce their emissions prior to having the WEC assessed upon them otherwise compliance will become unaffordable for them. Similarly, Commenter 0215 suggested that implementation of WEC fees prior to actual approval and implementation of state programs, as anticipated in NSPS OOOOc is premature and may cause damage to smaller operators while simultaneously frustrating the intent of the Proposed Rule.

Similarly, commenters (0238, 0270) expressed concern about the length of time it could take for the exemption to become available. Commenters stated that it is possible that it could take at

least four years for every standard and state plan to be in effect, as states are afforded two years to submit their proposal to the EPA, the EPA has another year to act on such proposals, and the EPA has an additional year to develop and propose a Federal plan for existing sources in a state whose plan is rejected. The commenters disagreed with imposing WEC fees on operators in states with approved OOOOc plans in spite of wholly complying with all requirements simply because there are outlying states without approved plans. The commenters expressed concern that such a practice means that complying with the rule's requirements isn't even entirely within a state's control and that a state's potential best efforts to comply with the rule still might not result in an exemption. The commenters suggested this was against the tenets of cooperative federalism and unfairly penalized individual states. The commenter 0238 also stated the EPA's proposed approach to and interpretation of CAA section 136 completely disregards the public notice and public comment legal requirements and flew in the face of government transparency. Commenter 0195 also expressed concern about the exemption not being available for a number of years which could be hard on small businesses.

Response 1: The EPA disagrees with these comments. Congress mandated under CAA section 136(e) the EPA to collect the charge beginning with emissions in reporting year 2024, notwithstanding the fact that state plans will not be available and approved before this time—a fact of which Congress was aware when it promulgated section 136. For the EPA's complete discussion on this matter, including the EPA's understanding that Congress purposely structured the WEC program to incentive early reductions in methane emissions, see section II.D.2. of the preamble to the final rule. The EPA disagrees with comments that we have disregarded any public notice or public legal requirements.

Comment 2: Commenter 0231 noted that the EPA's interpretation of WEC and the access to the exemptions being delayed by several years will result in punishment rather than bridging gaps in emissions compliance as the EPA intended.

Response 2: Regarding timing gaps between the first collection of the WEC and the availability of the regulatory compliance exemption, please see response 8 in section 5. Regarding the EPA's intent with respect to the term "bridge," see response 10 in section 5.

5.2.1 Available when plans are approved and in effect

Comment 1: Commenters (0225, 0236, 0276, 0284, 0292, 0866, 0905) agreed with the EPA's interpretation that the exemption should be available when state or Federal plans are in effect even if full implementation of those requirements is not required until a later date. Commenter 0905 agreed with the EPA's justification that facilities can be in compliance with the requirements in a plan even if full implementation of those requirements is not yet required. Commenter 0276 requested the EPA revise the preamble to make it clear that the EPA can determine availability upon adoption of each state or Federal OOOOc plan. Commenter 0284 suggested it would be too onerous to implement and track compliance dates within each state or Federal plan as the benchmark for determining when the exemption would become available.

Commenter 0284 urged the EPA to pursue an approach that results in the most timely equivalency determinations to be made. The commenter did not believe an approach requiring all state and Federal plans to be effective and approved to be the most timely.

Commenter 0866 suggested that interpreting Section 136(f)(6) to mean that the standards and plans are in place for the specific states and applicable facilities for which the exemption is in question would avoid inappropriately tying the actions of individual states together as well as creating incentives for states to efficiently develop plans to provide local energy industry members with a pathway to the exemption.

Response 1: In the final rulemaking, the EPA is finalizing a state-by-state approach for implementing the regulatory compliance exemption and is finalizing that the exemption will be available in each state after the last compliance date has passed. See the discussion in section II.D.2.b. of the preamble to the final rule for the EPA's detailed rationale for this change from proposal. As discussed in the preamble, in summary, the EPA is finalizing an approach in which all WEC applicable facilities with applicable CAA section 111(b) and (d) facilities in a single state will be eligible for the regulatory compliance date at the same time. Establishing a single date for exemption availability for each state ensures that the exemption can be properly implemented, and that the EPA can accurately verify exemption eligibility, while simultaneously reducing industry burden. We believe the finalized approach aligns with the best reading of the statute and with one of Congress's primary goals for the WEC—to continuously incentivize methane emission reductions across the oil and gas industry during the period leading up to the date at which the requirements in EG OOOOc-implementing plans are fully implemented.

Comment 2: Commenter 0266 stated the position that the regulatory compliance exemption should not be granted to any facility until all states have fully implemented section 111(b) standards and (d) plans and that all compliance dates within the NSPS and the state and Federal plans have passed. The commenter declared the financial incentive provided by collecting the WEC on methane emissions could be a more powerful tool for reducing methane emissions than the prescriptive requirements under 111(b) or (d). Therefore, not granting any exemptions before all states have fully implemented their section 111(b) standards and 111(d) plans would likely result in a greater amount of methane emissions reductions than providing exemptions before both these criteria are met.

Similarly, commenter 0936 disagreed with the EPA's interpretation that the standards and plans are in effect when all states and Federal plans are approved. The commenter recommended instead that the EPA interpret "in effect" to mean that all compliance dates in the state and Federal plans have passed. The commenter suggested that the proposed approach would only delay reduction of methane emissions. Commenter 0294 encouraged the EPA to finalize an approach that the exemption only becomes available once final standards and plans at least as strong as the EPA's 2021 proposal are in effect in all states and by requiring operators to demonstrate full compliance across their facilities. The commenter believed this approach would

result in accelerated effective, nationwide implementation of the EPA's recently finalized CAA section 111 standards and build accountability across U.S. oil and gas operations.

Response 2: In the final rulemaking, the EPA is finalizing a state-by-state approach for implementing the regulatory compliance exemption, and is finalizing that the exemption will be available in each state after the last compliance date has passed, rather than when the plans are first in effect. See the discussion in section II.D.2.b. of the preamble to the final rule for the EPA's rationale for this change from proposal. For the EPA's rationale on timing availability of the regulatory compliance exemption to WEC applicable facilities, see the discussion in section II.D.2.b. of the preamble to the final rule.

5.2.2 Alternative approach to be available at state-by-state level based upon each state's final compliance deadline for CAA section 111(d) facilities

Comment 1: Commenter 0284 agreed with the approach to make the exemption available at a state-by-state level based on each state's final compliance deadline for CAA section 111(d) facilities. However, the commenter made clear its preference for a suggested approach wherein the nationwide equivalency determination can be made promptly after final promulgation of subparts OOOOa/b/c.

Response 1: The EPA is finalizing a state-by-state approach for the determination process. As discussed in section II.D.2. of the preamble to the final rule, the EPA is finalizing the rule to include a shift from the proposed approach of making the exemption available when state or Federal plans are approved and "in effect" (*i.e.*, a plan's effective date), to the final approach of making the exemption available when a WEC applicable facility is "in compliance with methane emission requirements" of both the NSPS OOOOb standards and EG OOOOc-implementing state or Federal plans – that is, the point in time when all of the CAA section 111(b) and (d) facilities must comply with the emissions requirements therein. Regarding the timing of equivalency determinations to be made on a state-by-state basis, we refer the commenter to section II.D.2.a. of the preamble to the final rule.

5.3 Emissions Year in Which Exemption Takes Effect

Comment 1: Commenter 0282 notes that the earliest the regulatory compliance exemption would become available is 2027. The commenter expressed concern that for facilities that are located in areas on Tribal lands where a Federal implementation plan (FIP) is already known to be expected to be necessary, which will likely not occur until mid-2028. This protracted timeline for these Tribal areas puts such operations at a disadvantage compared to similar operations on state-regulated lands. Therefore, the commenter strongly recommended the EPA develop a FIP within the first year that would apply to all areas that do not have an approved SIP or TIP. The commenter suggested the FIP could largely mirror the emission guidelines set forth in OOOOc and could be voluntary for the first 5 years. This would provide a compliance option to allow operators to take advantage of the regulatory exemption. The commenter further recommends that at a minimum, the EPA develop FIPs for Indian country concurrent with SIP/TIP development to ensure the prompt issuance of FIPs for Tribes that do not develop their own

plans. The commenter concluded that the expedited development and approval of a FIP is necessary to alleviate the huge financial burden being placed on a tribally owned facility, by complying with finalized rules under CAA Section 111(d).

Response 1: The EPA notes that Tribes have the right to submit Tribal plans, which the EPA will review for approval or disapproval. In cases where the EPA determines that disapproval of the plan is appropriate, or where a Tribe does not provide a Tribal plan, CAA section 111(d)(2), and the reference therein to CAA section 110, provides the timeline by which the EPA must promulgate a Federal plan. The EPA will monitor the progress of states and Tribes to determine if a more accelerated timeline is warranted.

Comment 2: Commenter 0276 asserted that the EPA's proposed implementing rule eviscerated the Regulatory Compliance Exemption because as proposed, it would not be available for at least three years due to states being allowed time to submit their 111(d) plans and for the EPA to review and approve or disapprove them, and once available, will be virtually impossible to achieve (particularly for the onshore and gathering and boosting sectors). The commenter further asserted that this gives no meaningful effect to Congress's intent to provide a Regulatory Compliance Exemption. In other words, the EPA effectively interpreted the Regulatory Compliance Exemption out of the statute. Commenter pointed to *Zadvydas v. Davis*, 533 U.S. 678, 696 (2001) where if Congress made its intent clear in the statute, courts "must give effect to that intent"; cf. *Kosak v. United States*, 465 U.S. 848, 854 (1984) (a court should not interpret a statute to "nullif[y]" a portion of the statute "through judicial interpretation").

Response 2: The EPA disagrees with this comment. Congress mandated under CAA section 136(e) the EPA to collect the charge beginning with emissions in reporting year 2024, notwithstanding the fact that state plans will not be available and approved before this time. For the EPA's complete discussion on this matter, including the EPA's understanding that Congress purposely structured the WEC program to incentive early reductions in methane emissions, see section II.D.2. of the preamble to the final rule. For the EPA's rationale on timing availability of the regulatory compliance exemption to WEC applicable facilities, see the discussion in section II.D.2.b. of the preamble to the final rule.

Comment 3: Commenter 0292 supported the alternative approach where the regulatory compliance exemption becomes effective for eligible facilities in the following calendar year after all prerequisites are met. For example, all prerequisites are met in August 2028, the regulatory compliance exemption would become available January 1, 2029, for eligible facilities. The commenter noted that this method ensures a fair and balanced application of the exemption, preventing the exemption of emissions prior to meeting regulatory compliance.

Response 3: The EPA disagrees with this comment. As described in the section II.D.2.d. of the preamble to the final rule, the EPA is making the regulatory compliance exemption available in the year that the requirements in CAA section 136(f)(6)(A)(i)-(ii) are met (as opposed to another year); an approach aligned with the text and purpose of CAA section 136(f)(6)(A). Waiting until the following calendar year to make the regulatory compliance exemption would unduly limit access to the regulatory compliance exemption. The EPA also notes that, in the final rule, the

regulatory compliance exemption is not available until all of the requirements of the 111(b) and (d) plans are fully implemented, not just approved as proposed.

5.3.1 Available in calendar year in which conditions are met

Comment 1: Commenters (0180, 0221, 0284) agreed with the EPA's proposed approach that the regulatory compliance exemption would take effect in the reporting year in which the required conditions are met, as opposed to the following calendar year. Commenters (0180, 0221) expressed that this may incentivize WEC obligated parties to make efforts toward compliance as early as possible in the year rather than waiting toward the end of the calendar of the year.

Response 1: The EPA is finalizing a state-by-state approach for implementing the regulatory compliance exemption. See the discussion in section II.D.2. of the preamble to the final rule for the EPA's rationale for this change from proposal. This includes the availability of the regulatory compliance exemption in each state or Tribal area, in the calendar year which includes the final compliance date for the plan requirements, in the state or Tribal area with an approved plan. However, even after the regulatory compliance exemption is available in a particular state or Tribal area, the facility still must qualify for the exemption by being in compliance with the requirements established under the NSPS and plan, as applicable, in each calendar quarter of the year in which the facility's emissions exceed the waste emissions threshold.

5.3.2 Alternative approach of partial year depending upon when all exemption requirements are met

Comment 1: Commenter 0292 opposed the alternative approach that would apply a portion of the calendar year based on the time of meeting regulatory compliance through prorating of reported emissions. The commenter indicated that such an approach would place an unnecessary administrative burden on the EPA, diverting resources from other important aspects of implementation of the rule.

Response 1: The EPA has finalized as proposed the approach most consistent with a best reading of the statute that the regulatory compliance exemption will take effect in the reporting year in which the Administrator determines that the required conditions of CAA section 136(f)(6)(A)(i)-(ii) are met (with a modification from proposal that the exemption will be available on a state-by-state basis). The EPA also refers the commenter to sections II.D.2.c., II.D.2.f., and II.D.2.g. of the preamble to the final rule for a discussion of the finalized changes to make the assessment of compliance on a quarterly basis for purposes of the exemption for all WEC applicable facilities.

5.4 Approach for Regulatory Compliance Determinations

Comment 1: Commenter 0327 supported the EPA's proposed approach for making the two Administrator determinations simultaneously in a single administrative action after all CAA section 111(d) plans are approved and are in effect. The commenter further recommended that the EPA utilize a year-by-year evaluation in its future action to determine whether final section

111 standards and plans will achieve equivalent or greater emissions reductions compared to the EPA's November 2021 proposed 111 standards.

Response 1: The EPA is finalizing that the equivalency determination will be conducted on a state-by-state basis, as EG OOOOc-implementing plans are submitted and approved. As the EPA explained in section II.D.2.d. of preamble to the final rule, the EPA believes that a review of final EG OOOOc-implementing plans[9] is necessary to meet the statutory intent of section 136(f)(6)(i)(A) and its reference to "plans" in section 136(f)(6)(A)(i). Therefore, a check for equivalency will be conducted during the review of each state plan. See also section 5.4.4 for additional comments and responses on the topic of using the 2021 proposed rules as a baseline for the equivalency analysis.

Regarding the comment that a year-by-year evaluation should be conducted, it is not clear to the EPA if the commenter is asking that the determination to be done on an on-going annual basis, whether there be an annual report where there is a status of the trends of actual emission trends, or whether the commenter is asking for the EPA to do a projection now, of what facilities would have done under the 2021 proposed rule and what they would have done under the 2024 NSPS/EG. Because the comment is not specific on these points, the EPA cannot meaningfully respond. Regarding reviews after the EPA makes its equivalency determination, if a state has not changed its plan, the EPA does not see the need for an annual review, unless the EPA amended the NSPS or EG, or a state updated their rules.

Comment 2: Commenter 0292 expressed concern about the potential for the regulatory compliance exemption extending to all emissions within an eligible facility, including those not regulated under section 111(b) and (d). Commenter urged the EPA to explore strategies to limit emissions from sources outside 111(b) and (d) under the exemption.

Response 2: The EPA refers the commenter to section II.D.2.e. of preamble to the final rule for the rationale to finalize the approach as proposed.

Comment 3: Commenter 0298 expressed concern about the EPA's overall approach. Commenter stated the EPA has introduced unnecessary and unduly burdensome requirements. Commenter expressed belief that it will be nearly impossible to qualify for two of the three exemptions established, in direct contradiction of the IRA's text. Commenters (0197, 0235, 0288) expressed concern about the timing and feasibility of compliance with NSPS OOOOb/c. Commenters (0197, 0288) specifically raised concerns due to difficulty with being able to demonstrate compliance with OOOOc as they believe the EPA has mischaracterized marginal wells (use of

[9] This includes Tribal plans, and as discussed in section II.D.2.a., the EPA interprets 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.

component counts rather than emissions throughput) and that the monitoring requirements of OOOOc will turn most wells uneconomic. Commenter 0288 also stated the EPA has not addressed concerns regarding intermittent flaring of marginal wells.

Response 3: As noted in previous responses, the final rule is utilizing a state-by-state approach for implementation of the regulatory compliance exemption. Please see the discussion in section II.D.2. of the preamble to the final rule for the rationale for this change from proposal. Comments about the characterization of emissions from marginal wells are out of scope with regard to this rulemaking. Comments regarding the compliance requirements of NSPS OOOOb/EG OOOOc are also out of scope with regard to this rulemaking.

Comment 4: Some commenters submitted comments regarding the nondelegation doctrine. Commenter 0299 stated that certain provisions of CAA section 136 violate principles of non-delegation and the unintelligibility canon as they are so unintelligible as to be inoperative, and provided as a specific example the directive for the EPA Administrator to conduct an equivalency determination under CAA section 136(f)(6). They cited as support *Whitman v. American Trucking Ass'ns, Inc.*, 531 U.S. 457, 473 (2001) ("When conferring decision-making authority upon agencies, Congress must lay down an intelligible principle to which the person or body authorized to act is directed to conform.")

The commenter stated that this issue is not the EPA's to fix, as "[t]o give meaning to what is meaningless is to create a text rather than interpret one." (quoting from Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012).)

Similarly, commenter 0216 noted that the Constitution imposes limits on the delegation of legislative power to administrative agencies[1] and at a minimum, must provide "an intelligible principle to guide [the agency's] use of discretion.[2] " The commenter is concerned that the EPA's interpretation of CAA section 136(f)(6) is problematic and raises non-delegation concerns, because the 2021 proposal contained no regulatory text and therefore there is no intelligible way to guide the EPA's application of the statute. The commenter also noted that because EG OOOOc must be implemented through state plans, which can incorporate various factors including RULOF, there is no way to know what emissions reductions would be achieved by the hypothetical state plans. Instead, the commenter offered that the EPA should look to the final requirements in its recently adopted NSPS OOOOb and OOOOc rules, as these are the eventual outcome of its November 2021 proposed rule. In doing so, the commenter stated, the EPA must take into consideration any revisions required because of judicial review. This reading, the commenter stated, would clarify and simplify the application of the regulatory compliance exemption.

Commenter 0283 also points out that the November 2021 proposal did not propose any regulatory text, and contends that it is impossible to tell with precision what the emissions reductions would have been. The commenter stated that under the path the EPA proposes, it will need to hypothesize what a proposed regulatory text corresponding to the November 2021 proposal would have looked like, speculate as to what changes would be made between that proposed regulatory text and the final version of that text, and then speculate as to how each state

would have designed its existing - source plan under CAA section 111(d)(1), including any exercise of state RULOF authority—comparing each of these steps to the actually existing regulatory text accompanying the December 2022 supplemental proposal, the final regulatory text from March 2024, and then each state's actual exercise of its state-planning authority, to include RULOF, over the coming years. This is impossible, and therefore it is an absurd construction of Congress's intent, explained the commenter.

Response 4: The EPA disagrees with this comment. For the EPA's full discussion on its approach for the determinations required by CAA section 136(f)(6)(A), including the appropriate points of comparison for the regulatory compliance exemption equivalency determination, and why the EPA will have adequate information to make this determination upon approval of state plans, see section II.D.2.d. of the preamble. The EPA also disagrees with the commenter's nondelegation claim and related argument that the agency cannot use the 2021 proposal because the proposal contained no regulatory text. Contrary to commenters' claims, Congress provided an intelligible principle: Congress explicitly referred to the 2021 proposal in CAA section 136(f)(6). As further explained in section II.D.2.d. of the preamble, the plain text indicates that Congress intended that the agency would use the 2021 proposal as the primary point of comparison in making the equivalency determination.

5.4.1 Determine via single administrative action

Comment 1: Commenters (0180, 0327) support the EPA's proposed approach to make all states and equivalency determinations simultaneously in a single administrative action after all state and Federal EG OOOOc-implementing plans have been approved and are in effect. Commenter 0327 clarified that EPA should amend the proposal to ensure the determination is subject to public notice and comment procedures under 42 U.S.C. 7607(d).

Response 1: The EPA is finalizing certain elements related to the approach for the determinations required by CAA section 136(f)(6)(A)(i) and (ii). The EPA is finalizing that determinations will be done for each individual state or tribe after both the NSPS OOOOb standards and EG OOOOc-implementing plans for that state or tribe are approved and in effect. The EPA is not taking final action on the specific elements that would be compared in the equivalency determinations. The EPA did not propose and is not taking final action on all other elements of the equivalency determination. These elements, along with both determinations themselves, will be addressed in a future administrative action(s). See section II.D.2.d. of the preamble to the final rule for more information.

See also section 5.4.4 for additional comments and responses on the topic of using the 2021 proposed rules as a baseline for the equivalency analysis.

Comment 2: Commenter 0287 disagreed with a single determination approach for purposes of the regulatory compliance exemption. The commenter noted that the EPA even recognized that revocations may occur precipitating the need for new determinations when the exemption is again available. The commenter suggested that for the EPA to only make a single determination and to defer action for facilities and states would frustrate those who have taken initiative for

early action to implement emissions control measures. The commenter concludes a better interpretation is one where the EPA is authorized to make more than one determination under CAA section 136(f)(6)(a)(i) and (ii).

Response 2: The EPA refers the commenter to the response to comment 1 of this section.

5.4.2 Conduct equivalency determination at national scale

Comment 1: Commenter 0905 supported the EPA's rationale for conducting a national equivalency evaluation if the EPA implements the "all or nothing" approach. While opposed to the "all or nothing" approach toward implementing the regulatory compliance exemption, the Commenter agreed with the EPA's assertion that the potential climate impacts are dependent upon the aggregate rather than where they occur; therefore, a national-level evaluation would provide an appropriate comparison of the overall impact of the reductions.

Response 1: The EPA acknowledges the comment. For a discussion on the EPA's finalized approach to conducting the equivalency determinations at a state-by-state level, we refer the commenter to section II.D.2.a. of the preamble to the final rule.

Comment 2: Commenter 0327 agreed that the EPA must establish equivalency on a national level, but also recommended that the EPA conduct a state-by state assessment of equivalency. Evaluate each state's standards and plans in effect to ensure that reductions are equivalent to those under the November 2021 proposal are being achieved. They stated that by ensuring that each state is achieving equivalent reductions under the section 111(b) standards and its section 111(d) plan, a nationwide determination of equivalency across all states would follow. Commenter 0327 further urged the agency to evaluate equivalency on an annual (year-by-year) basis. They suggest that comparisons of the reductions of what would have been achieved under the 2021 proposal to future years (2026, 2027, etc.) would provide a picture of the reductions achieved under the different schedules and timelines prescribed in the state or Federal plans.

Response 2: The EPA is finalizing a state-by-state determination process. See the discussion in section II.D.2 of the preamble to the final rule for the EPA's rationale for this change from proposal. To align the equivalency determination with the state-by-state approach, the EPA also is finalizing a timeline whereby the equivalency determination will be conducted on a state level for the both the NSPS and EG OOOOc-implementing state or Federal plan once the EG OOOOc-implementing plan is approved. The EPA will conduct the equivalency determination in a subsequent action.

Regarding the comment that a year-by-year evaluation should be conducted, it is not clear to the EPA whether the commenter is asking that the determination to be done on an on-going annual basis, whether there be an annual report where there is a status of the trends of actual emission trends, or whether the commenter is asking for the EPA to do a projection now of what facilities would have done under the 2021 proposed rule and what they would have done under this set of rules. Because the comment is not specific on these points, the EPA cannot meaningfully respond. Regarding reviews after the EPA makes its equivalency determination, if a state has not

changed its plan, the EPA does not see the need for an annual review, unless the EPA amended the NSPS or EG OOOOc, or a state updated their rules.

5.4.3 Alternative approach to conduct equivalency analysis at source-by-source level

Comment 1: Commenter 0299 supported a facility-level approach for regulatory compliance determinations. Commenter disagreed with the EPA's assertion that the equivalency determination relates to compliance with the collective methane emissions standards and plans required CAA sections 111(b) and (d). Instead, the Commenter stated compliance relates to the plans of states associated with particular facilities seeking the exemption, not all states "collectively." Commenter also disagreed with the EPA's argument that a national-level evaluation was appropriate due to the climate impacts of these emissions are dependent on their aggregate quantity rather than where they occur. Commenter countered that climate impacts of methane emissions are realized only on a *global* level; therefore, a national-level evaluation is no more appropriate, or relevant to the climate, than a state-level, city-level, or facility-level evaluation. Section 136(f)(6)(A) earlier specifies precisely what "compliance" is being considered in the equivalency determination: that of the "*applicable facility* that is subject to . . . [state and Federal] methane emissions requirements" and that is seeking the exemption. Commenter 0299 concluded that, as a result, the equivalency determination is best understood to require a facility-level determination, which can be achieved by examining the state plans for those states in which the facility operates.

Response 1: The EPA's rationale for the finalized approach to make the regulatory compliance exemption available on a state-by-state basis is discussed at section II.D.2. of the preamble to the final rule, and includes detailed discussion of the issues raised by this Commenter, including the approach to the regulatory compliance determination being made on a state-by-state basis and the scope of the equivalency determination. The EPA refers the commenter to sections II.D.2.c., II.D.2.f. and II.D.2.g. for application of the regulatory compliance exemption for each WEC applicable facility on a quarterly basis.

Comment 2: Commenter 0284 suggested the EPA adopt a combined quantitative and qualitative approach that is practical to implement and allows for a timely determination that can be made to expeditiously determine fee exemption applicability. This commenter suggested a similar approach to the one used for comparing state fugitive emissions programs for well sites and compressor stations to the standards in NSPS subpart OOOOa.

Response 2: The EPA's approach and rationale for applying the regulatory compliance exemption, and doing so on a state-by-state basis, is discussed at length in section II.D.2.d. of the preamble. Consistent with the final state-by-state approach for implementation of the regulatory compliance exemption, the equivalency determination for each state will be made taking into consideration the EG OOOOc-implementing state or Federal plan that is approved for each state. Additionally, and as discussed in section II.D.2.d. of the preamble, the Agency's preliminary analysis indicates that the final NSPS OOOOb standards and final EG OOOOc presumptive standards are likely more stringent than their respective standards and presumptive standards that were proposed in 2021. Also as described in section II.D.2.d. of the preamble, in order to provide

additional certainty to states as they develop EG OOOOc-implementing plans, the EPA will conduct a technical analysis comparing the emissions reductions achieved by the 2021 NSPS/EG Proposal and the 2024 Final NSPS/EG; the EPA expects that the results of this analysis will demonstrate that the 2024 Final NSPS/EG achieves equivalent or greater emissions reductions compared to the reductions that would have been achieved by the 2021 NSPS/EG Proposal. The results of this analysis will inform the equivalency determination that must then be conducted for each state based on each state's approved plan; the EPA expects that it will also simplify the determination process and provide a general reference point for states in developing their plans.

Comment 3: Commenters (0235, 0298) both indicated there are problems with the EPA's proposed approach for the regulatory compliance exemption.

Response 3: The commenters did not provide specific details regarding its perceived problems with the EPA's proposed approach for the regulatory compliance exemption, and thus the EPA cannot meaningfully respond.

5.4.4 Proposed approach of using 2021 NSPS OOOOb/EG OOOOc as baseline

Comment 1: Commenters (0273, 0287) stated that the purpose of including the equivalency requirement is to ensure that the final NSPS OOOOb and EG OOOOc requirements will achieve greater or equal amounts of overall emission reductions than the 2021 proposal. Commenters (0239, 0287) believed that the determination can be made on the face of the two final rules, and that actual plans are not needed because the EPA proclaimed in the December 6, 2022, supplemental proposal (87 FR 74,702) to the proposed November 2021 rule, that the proposal was designed "to update, strengthen, and expand the standards proposed on November 15, 2021." Accordingly, concluded the commenter, the EPA should be able make the equivalency determination as soon as possible, and does not need to wait for plans to be in place before doing so. Commenter 0239 urged this determination be done immediately for NSPS OOOOb and as each state plan is approved for OOOOc.

Commenters (0293, 0298) supported the equivalency determination demonstrating that reductions under an EG OOOOc-implementing plan are equivalent to those represented in the 2024 Final NSPS/EG rather than the 2021 proposal. Commenter 0293 was concerned that using the 2021 proposal may disqualify a state from using RULOF, which is specifically allowed in the 2024 Final NSPS/EG.

Commenter 0212 is concerned that the lack of regulatory language in the 2021 Proposal creates a challenge in making an equivalency determination. The commenter questioned how the EPA would interpret the 2021 NSPS OOOOb Proposal against the 2024 NSPS OOOOb final rule, but nonetheless believed that the EPA should make the equivalency determination now (for the NSPS OOOOb) since those regulations are final. The commenter noted that if the EPA determined now that the final NSPS OOOOb regulations are not equivalent to the 2021 Proposal, which will close out the availability of the regulatory compliance exemption. The commenter is concerned that if the EPA delays these decisions, it will leave the regulated community and states in a position of trying to make key regulatory and investment decisions in a void, and if the

EPA were to determine that the NSPS OOOOb regulations failed to meet the equivalency test, states plans would have to fill the gap with more extreme regulations than in the EG or NSPS OOOOb. Commenters (0212, 0273) also supported making state-by-state determinations to allow for availability of the regulatory compliance exemption in a timely manner.

Commenter 0327 generally supported the EPA's proposed approach including conducting the determination after all state and Federal plans have been approved and supported the EPA's proposal that the determination should be made with respect to the total emissions reductions achieved by both section 111(b) standards and section 111(d) plans.

Commenter 0240 stated that the EPA's proposal for the WEC is not in accordance with the IRA. The commenter explained that the IRA created a regulatory compliance exemption that exempts an applicable facility that complies with the "methane emissions standards and plans pursuant to subsections (b) and (d) of section 111" but the EPA has determined that "methane emissions standards and plans pursuant to subsections (b) and (d) of CAA section 111 have been approved and are in effect in all States with respect to the applicable facilities," and where those standards and plans "will result in equivalent or greater emission reductions as would be achieved by" the EPA's proposed 2021 version of the Proposed Rule.

Response 1: The EPA is finalizing, as proposed, that the equivalency determination will be conducted by comparing the methane emission reductions resulting from compliance with the NSPS OOOOb standards and the EG OOOOc implementing plans in each state against a baseline in which the proposed standards were finalized as drafted in the 2021 NSPS/EG Proposal and implemented in each. However, in a change from the proposal, as discussed in section II.D.2.d. of the final preamble, the EPA is finalizing a state-by-state approach for the implementation of the regulatory compliance exemption. Consistent with the final state-by-state approach for implementation of the regulatory compliance exemption, the equivalency determination for each state will be made taking into consideration the EG OOOOc-implementing state or Federal plan that is approved for each state. Additionally, as discussed in section II.D.2.d. of this preamble, in order to provide additional certainty to states as they develop EG OOOOc-implementing plans, the EPA will conduct a technical analysis comparing the emissions reductions achieved by the 2021 NSPS/EG Proposal and the 2024 Final NSPS/EG. The EPA expects that the results of this analysis will demonstrate that the 2024 Final NSPS/EG achieves equivalent or greater emissions reductions compared to the reductions that would have been achieved by the 2021 NSPS/EG Proposal. The results of this analysis will inform the equivalency determination that must then be conducted for each state based on each state's approved plan; the EPA expects that it will also simplify the determination process and provide a general reference point for states in developing their plans.

Regarding the comment that the EPA should use the final NSPS and EG as the baseline for emissions, the EPA does not agree that the basis of the comparison can be the final NSPS and EG. See the EPA's complete discussion of this matter in section II.D.2.d. of the preamble to the final rule.

Regarding the comment about RULOF, the EPA acknowledges that EG OOOOc-implementing state plans submitted pursuant to the EG OOOOc may implement RULOF. States may, as always when developing state plans under section 111(d), implement RULOF as appropriate, and the EPA's analysis of this use of RULOF will occur when reviewing the state plan under its section 111 authority. As regards the WEC program, the agency will be evaluating the impacts of RULOF on the equivalency in a future administrative action when conducting the equivalency determinations at a state-by-state level. See the EPA's complete discussion of this matter in section II.D.2.d. of the preamble to the final rule.

Comment 2: Commenter 0905 stated that the EPA's proposed approach would cause any state plan containing RULOF-based emissions limitations or standards that are "less stringent" than the corresponding emissions guidelines in the 2021 proposal to be less stringent than the 2021 proposal unless the state otherwise imposes sufficiently more stringent emissions limitations or standards on other sources to make up the difference. The commenter also stated that if the EPA were to adopt a state-by-state approach to making equivalency determinations, this means that no state plan containing RULOF-based emissions limitations or standards could be determined by the EPA to provide equivalent emissions reductions as the 2021 proposal, unless the state achieves greater than needed emissions reductions in other ways. The commenter believed that the proposal is flawed in this regard for two reasons. The commenter stated that first, in construing and applying CAA section 136(f)(6)(A)(ii), any state plan will "result in equivalent or greater emissions reductions as would be achieved by [the 2021] proposed rule" because that proposed rule did not propose legally cognizable emissions limitations or standards that could possibly have resulted in emissions reductions. Thus, the commenter stated, inclusion of RULOF-based emissions limitations or standards in a state plan would not cause that state plan to produce fewer emissions reductions than strict adherence to the 2021 "proposed rule." Second, the commenter noted that the 2021 proposed rule acknowledged and accommodated the possibility of less stringent state standards based on consideration of RULOF, so the commenter believed that the 2021 proposed rule did incorporate the possibility of less stringent RULOF-based standards and therefore would achieve at least as many emissions reductions as the 2021 proposal would require because such standards were embraced in that proposal.

Response 2: The EPA disagrees with this comment and refers to section II.D.2.d. of the preamble to the final rule for the agency's full discussion of this matter. States may, as always when developing state plans under section 111(d), implement RULOF as appropriate, and the EPA's analysis of such use of RULOF occurs when reviewing the adequacy of the state plan under its section 111 authority. As regards the WEC program, the agency will be evaluating the impacts of RULOF on the equivalency in a future administrative action when conducting the equivalency determinations at a state-by-state level. See the EPA's complete discussion of this matter in section II.D.2.d. of the preamble to the final rule. Additionally, as discussed above and in section II.D.2.d. of the preamble, to provide additional certainty to states as they develop EG OOOOc-implementing plans, the EPA will conduct an initial technical analysis comparing the emissions reductions achieved by the 2021 NSPS/EG Proposal and the 2024 Final NSPS/EG. The EPA expects that the results of this analysis will demonstrate that the 2024 Final NSPS/EG achieves equivalent or greater emissions reductions compared to the reductions that would have been achieved by the 2021 NSPS/EG Proposal. The results of this analysis will inform the

equivalency determination that must then be conducted for each state based on each state's approved plan; the EPA expects that it will also simplify the determination process and provide a general reference point for states in developing their plans.

Comment 3: Commenter 0212 questioned how the EPA will address differences in the application of RULOF amongst states. This commenter also is concerned that a comparison of the 2021 proposal to the 2024 final subpart OOOOc EG would be inappropriate, because they believed there is no reason to assume that the RULOF facilities under the 2024 EG would not have been RULOF facilities under the 2021 proposal. The commenter also is concerned that penalizing all applicable facilities in a state, because it has RULOF facilities, is unwarranted and inequitable and that the impact of this approach is to deny facilities that deserve RULOF treatment its application, in order to obtain the regulatory compliance exemption for the remaining facilities in a state, is an egregiously harsh punishment for those uneconomic facilities that are likely mature operations and probably small businesses. This commenter believed a more equitable approach would be to compare whatever the EPA concludes in the efficacy of the 2021 EG proposal with the basic regulatory structure in an approved state plan under the 2024 EG.

Commenter 0327 supported the EPA's proposed approach for establishing the baseline emissions that would have been achieved under the 2021 proposal, which assesses reductions had the proposed emissions guidelines been adopted and implemented by all states as proposed, as well as the EPA's recognition that it must account for any variances under the RULOF provision in assessing emissions reductions under final 111(d) plans.

Response 3: Please see Comment and Response 1 above and section II.D.2.d. of the preamble to the final rule. Regarding the differences in application of RULOF amongst states, because the EPA is finalizing a state-by-state approach for the implementation of the regulatory compliance exemption, the inclusion of RULOF in one state's EG OOOOc-implementing plan will not impact those of other states.

Comment 4: Commenter 0283 disagreed with the EPA's proposed interpretation that CAA section 136(f)(6)(ii) requires 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. The commenter is concerned because the EPA's interpretation presupposes that no changes to the NSPS OOOOb/EG OOOOc 2021 proposal prior to finalization can be considered with respect to the equivalency analysis (yet it was finalized with significant changes). However, the commenter stated, the text of CAA section 136(f)(6) does not state that the analysis is to be conducted on the NSPS OOOOb/EG OOOOc 2021 proposal "if finalized as proposed", but instead states that the determination is to be made upon the proposal if "finalized and implemented" (emphasis added). The commenter stated that this would be the first time to their knowledge that Congress has deferred to an unfinalized the EPA rule rather than a finalized regulatory standard. This fact also supports the view that the "finalized and implemented" (rather than the proposed) rule was intended as the baseline, explained the commenter. Failing to consider these changes with respect to the implementation of the legislation has the effect of inhibiting the legislative process by 'backdooring' rules that were never fully vetted by constituents and stakeholders, warned the

commenter. Furthermore, the commenter believed it will be impracticable for the EPA to accurately and empirically determine the equivalency effects of a proposed rule, due to the lack of detail in the proposed rule. This also raised constitutional non-delegation, due process, and fair notice issues, stated the commenter. The commenter stated that Congress cannot constitutionally delegate rulemaking authority to an agency without giving the agency a sufficient intelligible principle to cabin its exercise of Congress's delegated authority, and here it has not done so. And Congress must furthermore provide parties subject to regulation some notice of the conduct on their part which will incur a penalty, stated the commenter.

Commenter 0283 suggested that the EPA can avoid the issue by instead turning to the projections of emissions reductions made in the November 2021 proposal and the March 2024 final rule. Specifically, the commenter opined that the EPA estimated the emissions effects of the November 2021 proposal in that proposal itself, and the recently finalized regulation that emerged as a result of that November 2021 proposal and subsequent December 2022 supplemental proposal also contains an estimate of the final rule's emission effects which demonstrates that the EPA has, in a sense, already determined that the final rule will achieve equivalent, if not greater, reductions than those projected for the initial November 2021 proposal. The commenter stated that even adjusting for the different time periods of the projections (12 years in the November 2021 proposal; 14 years for the March 2024 final rule), the EPA's own analysis projects that the final rule will result in greater emissions of all three categories of pollutant analyzed than its projections for the November 2021 proposal. The commenter concluded that the only reasonable comparison for the equivalency analysis is to compare the RIA from the proposed rule with the RIA from the final rule.

Commenter 0905 stated that the Agency must make it clear in the final rule that the overall emissions reductions achieved by state plans must be considered in making equivalency determinations and not just the emissions reductions that would be achieved by the program elements proposed in 2021. The commenter believed this is required because the 2022 supplemental proposal included at least one source type (*i.e.*, dry seal centrifugal compressors) not covered by the 2021 proposal did not. Additionally, the commenter stated that the 2022 supplemental proposal provided regulatory details about certain provisions that were addressed only in concept in the 2021 proposal (*e.g.*, the super-emitter response program (SERP)). The commenter stated that such conceptual elements of the 2021 proposal do not constitute and cannot reasonably be construed as constituting a proposed emissions limitation or standard for purposes of making equivalency determinations under CAA section 136(f)(6)(A)(ii). The commenter concluded that as long as the standards set by states are consistent with CAA section 111 standard setting criteria, states have further latitude to regulate source types and activities in their CAA section 111(d) existing source programs than the EPA nominally would regulate under its emissions guidelines and the EPA should consider these overall emissions reductions.

Response 4: The EPA disagrees with the commenter's assertion that it is inappropriate for EPA to interpret CAA section 136(f)(6)(ii) to require a comparison of the emissions reductions that will be achieved by the final NSPS OOOOb and state plans, and the reductions that would have been achieved by the NSPS OOOOb/EG OOOOc 2021 proposal if finalized as proposed. The

EPA also disagrees with commenters suggesting that the EPA need only compare emissions projections from the 2021 NSPS/EG Proposed Rule with the emissions projections in the 2024 NSPS/EG Final Rule. However, the EPA agrees that for purposes of the state equivalency determinations, the EPA must consider reductions achieved by the state plans. For a complete discussion of the EPA's position on this matter, see section II.D.2.d. of the preamble.

The EPA also disagrees with the commenters' claims that the agency's approach would raise nondelegation concerns. First, Congress established a clear intelligible principle in directing the EPA, under CAA section 136(f)(6), to compare the emissions reductions achieved by section 111 standards "and plans" against the emissions reductions that would have been achieved by the 2021 proposal if it were finalized and implemented. In addition to the clear directive established in the text at issue here, Congress was aware when promulgating CAA section 136 that the EPA had developed a complete regulatory analysis in the RIA accompanying the 2021 proposal, and the agency could therefore refer to the RIA in determining the projected emissions reductions that would have been achieved under this regulatory scheme.

5.5 Application of the Regulatory Compliance Exemption to Subpart W Facilities

Comment 1: Two commenters (0282, 0284) recommended that sources be allowed to voluntarily comply with 40 CFR part 60 subparts OOOOa, OOOOb, and OOOOc, to allow them to qualify for the regulatory compliance exemption. By voluntary compliance, commenter 0284 stated that a facility would voluntarily opt into the standards that would otherwise be applicable to the facility. Commenter 0282 requested that existing sources be able to comply with the proposed EG OOOOc without waiting for the approval of an EG OOOOc-implementing state or Federal plan. These commenters believed that such an approach would incentivize early implementation of these subparts and would thereby result in overall methane emissions reductions sooner. The commenters stated that allowing facilities that voluntarily comply to qualify for a regulatory exemption is consistent with the IRA's methane provisions' intended purpose of incentivizing reductions in methane emissions from the oil and gas sector as quickly as possible, and would require minimal additional resources from the Agency, as the burden of demonstrating compliance is on the source.

Response 1: The commenters make two points. First, the commenters speak to voluntary compliance with the proposed requirements in the EG OOOOc, instead of waiting for approval of an EG OOOOc-implementing state or Federal plan to implement those requirements. This is not feasible, because EG OOOOc does not contain any enforceable requirements with which a source might comply. Instead, EG OOOOc creates requirements for air pollution control agencies in a state or US protectorate to submit a state or Tribal plan which then implements the emissions guidelines. Regarding other actions to achieve emissions reductions more quickly, as discussed in comment and response 8 in section 5 of this response to comment document, the EPA believes Congress intended for industry to be encouraged to adopt cost-effective, readily available technologies in an accelerated manner to reduce methane, thereby reducing their WEC obligation before the regulatory compliance exemption becomes available (a "bridge"). However, as explained in comment and response 3 in section 5.3 and the preamble to the final rule at section II.D.2.c, the regulatory compliance exemption will be available in a state, in the

calendar year which includes the final compliance date for the state plan requirements, in the state with an approved state plan. Therefore, early compliance with the NSPS or state or Federal plan(s) implementing the EG OOOOc will not accelerate the availability of the regulatory compliance exemption for a facility.

Second, regarding voluntary compliance for sources not subject to the NSPS or an EG OOOOc-implementing state or Federal plan, to potentially qualify for the regulatory compliance exemption, the EPA notes that there are industry segments (*i.e.*, offshore petroleum and natural gas production, liquefied natural gas storage and import and export equipment, and onshore natural gas transmission pipeline) described by section 136(d) which do not have section 111(b) or (d) affected or designated facilities. Therefore, there are no standards for which facilities in these segments can avail themselves in order to access the regulatory compliance exemption. Further, for facilities with section 111(b) and (d) emissions sources, after the final compliance date in the state with an approved EG OOOOc-implementing state or Federal plan, the EPA anticipates that most WEC applicable facilities (with the exceptions noted above) will have at least one section 111(b) or (d) emissions source and will be covered by either NSPS OOOOb, or an EG OOOOc-implementing state or Federal plan approved pursuant to section 111(d), such that "voluntary" compliance will have no meaning. See also section 5.5.1 for the EPA's final approach for applying the regulatory compliance exemption to the entire subpart W facility. Finally, the EPA notes that facilities may avoid the WEC charge at any time by voluntarily adopting measures to reduce emissions below the WEC thresholds, irrespective of CAA Section 111 compliance or eligibility for the regulatory compliance exemption.

5.5.1 Proposed approach to apply to entire subpart W facility

Comment 1: Commenter 0284 supported the proposal by the EPA 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. The commenter believed this is reasonable, stating that on their face, subpart W and the CAA section 111 standards have scopes which do not match up one-for-one. The commenter cautioned it would be very difficult-if not unworkable-for operators to break out their emissions from individual emissions sources within a single facility reporting to subpart W because of the complexity of distinguishing between different emissions sources for recordkeeping and reporting purposes. The commenter suggested this complexity can and should be avoided. The commenter further believed the proposal is CAA section 136(f)(6), which refers to an entire "applicable facility" rather than, for example, "an individual component of an applicable facility." Similarly, the commenter explained that CAA section 136(f)(6)(i) refers to standards under CAA section 111(b) and (d) "with respect to such facilities." The commenter surmised that Congress could have imposed additional limiting language (demonstrated with emphasized text): "with respect to such individual components of the applicable facilities," but Congress did not do so.

Response 1: The EPA acknowledges the comment and is finalizing this approach as proposed. See section II.D.2.e. of the preamble to the final rule for more information.

Comment 2: Commenter 0289 is concerned that the EPA's interpretation of how to apply the regulatory compliance exemption effectively renders the exemption's use impossible. The commenter explained that compliance exemption language in the statute clearly states that facilities that are "subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 7411 of [the Clean Air Act]" (emphasis added) should not have charges imposed upon them. The commenter stated that while the statutory language creates a definition of applicable facilities for the establishment of the waste emissions threshold and development of WEC applicability, CAA section 136 (f)(6) makes it clear that for the purposes of the compliance exemption, the key question is whether the facilities are subject to and in compliance with emission requirements under the relevant sections of the CAA section 111(b) and 111(d). The commenter understood from the proposal, that the EPA interprets that the "applicable facility" definition in CAA section 136(d) should instead be applied to this section, but 111(b) and 111(d) requirements are not applied at the subpart W facility level. The commenter concluded that by interpreting the language as the Agency has, it has rendered the statutory language "pursuant to subsections (b) and (d) of section 7411" meaningless, essentially interpreting the statute as though that language isn't there. The commenter stated that this is clearly an interpretation contrary to the statute. The commenter noted that the EPA assessed and rejected an alternative, under which the regulatory compliance exemption would exempt emissions from individual CAA section 111(b) and (d) sources rather than the entire subpart W facility, because CAA section 136(d) defines applicable facility differently. The commenter argued that the EPA was wrong to reject this, because the statute clearly intends subsections (b) and (d) of section 7411 to be the relevant regulatory framework for assessing applicability.

Response 2: The EPA proposed that a WEC applicable facility which includes any CAA section 111(b) or (d) facility would be eligible for the exemption once the other criteria are met (*i.e.*, the Administrator determinations and proposed compliance elements in 40 CFR 99.41). See the discussion in section II.D.2.e. of the proposal preamble. The EPA is finalizing this "all-in" approach and believes that it will provide access to the exemption consistent with the best reading of the statute and will not render its use impossible, as claimed by one commenter. See the rationale provided in section II.D.2.e. of the preamble to the final rule. The EPA also explained in the preamble to the final rule in section II.D.2.e., that because the individual emissions sources in subpart W do not always align with the individual CAA section 111(b) and (d) emissions source, determining the scope of individual subpart W emissions which would be excluded, based on CAA section 111(b) and (d) applicability is difficult. The commenter did not provide a suggested methodology for the EPA to consider enabling this approach. See also the discussion in section II.D.2.f. of the preamble to the final rule and comment and response 4 in this section of this response to comment document regarding the scope of the WEC applicable facility at onshore production and gathering and boosting sites that will no longer be eligible for the regulatory compliance exemption in the event of noncompliance. Finally, the EPA notes that it is finalizing an "all-in" approach for all WEC applicable facilities for which the exemption applies, and all "all-out" approach for all WEC applicable facilities except for WEC applicable facilities in the onshore production and gathering and boosting industry segment, which are defined at the basin level. Thus, for all WEC applicable facilities except basin-wide facilities, noncompliance for any 111(b) or 111(d) source within the WEC applicable facility would lead to loss of the regulatory compliance exemption for the entire WEC applicable facility. WEC

applicable facilities in the onshore production and gathering and boosting industry segment are treated differently, as explained at section II.D.2.f. of the preamble—in short, the EPA is finalizing that for facilities in industry segments for which the facility is defined at the hydrocarbon basin level in 40 CFR 98.238 only the emissions from a "site" (*i.e.*, well-pad or gathering and boosting site) with noncompliance would lose the exemption.

Comment 3: Commenter 0289 provided what they believe is a more straightforward and plain language interpretation of the statutory language, which is to provide an exemption from the WEC obligation for facilities and equipment that are subject to and in compliance with the NSPS OOOOb requirements, once implemented, and then in the future for EG OOOOc regulated facilities, once implemented. To accomplish this, the commenter stated that the EPA could use the reporting requirements already present within the NSPS OOOOb/EG OOOOc rulemaking. The commenter explained that under 40 CFR 60.5420b(b), annual reports are due to the EPA that contain the company name, "facility site name," and an identification of each affected facility associated with each "facility site name," which essentially lists each affected facility that could be in compliance with NSPS OOOOb (or EG OOOOc in future Federal or state implementing plans) and that is associated with a facility site name. The commenter explained that the EPA should provide for WEC exemptions consistent with the reporting requirements under NSPS OOOOb and in the future EG OOOOc-implementing state and Federal plans. The commenter further explained that for each "facility site name" that has associated affected facilities subject to "methane emissions requirements pursuant to subsections (b) and (d) of section 7411," the associated emissions and production from that facility site should be removed from the WEC calculation for the associated WEC applicable facility, so long as those affected facilities did not include any violations of the rule that result in excess emissions. The commenter summarized that by using this already existing, certified, and enforceable reporting requirement to establish WEC exemption eligibility, the EPA could accomplish the intent of the statute, to serve as a bridge to incentivize compliance with and accelerate implementation of the new methane emissions reduction standards.

Response 3: The EPA understands this comment to recommend that the EPA should rely only on reporting under the NSPS and EG OOOOc-implementing state or Federal plans to establish WEC exemption eligibility, instead of establishing separate compliance status reporting under part 99. The EPA notes that while the NSPS OOOOb and EG OOOOc-implementing state or Federal plan's reporting will provide a cornerstone for verification of exemption claims by the EPA, the burden of assimilating the compliance status for section 111(b) and (d) facilities which are part of a WEC applicable facility is up to the designated representative. Reporting under the NSPS OOOOb and EG OOOOc-implementing state or Federal plans does not include the necessary linkages to facilities which will make up a WEC applicable facility and will be provided through the part 99 reporting mechanism. See also the discussion in section II.D.2.h. of the preamble to the final rule for the EPA's rationale for the final requirements regarding reporting and recordkeeping.

Comment 4: Commenters (0214, 0287, 0866-A1, and 0905-A1) disagreed with the EPA's proposed approach to determine compliance on a subpart W facility-wide basis. Commenter 0287 stated that this approach is unworkable and inequitable to the midstream oil and gas

industry; therefore, the commenter urges EPA to adopt a site-level approach to determine compliance (and therefore eligibility) for the exemption. The commenter illustrated the perceived inequity through an example of how onshore oil and gas gathering and boosting industries are made up of multiple compressor stations within a basin, whereas onshore natural gas transmission compression industry, there may be just one such station. Despite best efforts, deviations occur, so using the basin-wide approach, just one non-compliance could make hundreds (or thousands) of emission sources ineligible for the exemption, even though the vast majority may be in compliance. The commenter requested EPA revise the definitions in the proposed WEC rule and in subpart W to provide for better opportunity for the midstream sector to avail themselves of the exemption.

Commenter 0214 stated that once the provisions of EG OOOOc are in effect, it is reasonable to presume that Congress intended for companies to no longer be subject to WEC charges, however, the way the rule is proposed makes it statistically impossible for entities to receive the exemption. EG OOOOc defines facilities in a way where there will be millions of affected facilities subject whereas a facility subject to WEC is the collection of all EG OOOOc facilities under common ownership. If one has a compliance issue in the basin, all of the others are subject to WEC charges. The commenter requested the rule be drafted to reflect Congress's intention of phasing out the charge upon EG OOOOc implementation.

Commenter 0905-A1 stated that if a violation is proven or admitted, the regulatory compliance exemption should only be disallowed for the particular applicable affected or designated facility in violation. The commenter believed that this comports with section 136(f)(6)(A) because the term "compliance" necessarily only applies to the parts of the applicable facilities that are subject to the subpart OOOO-series requirements. Further, the commenter argued that because the subpart OOOO-series rules apply to discrete applicable or designated facilities, it is not reasonable to extend the consequences of a violation beyond the applicable affected or designated facility that is in violation.

Response 4: The commenters make several points. First, for the purposes of determining the portion of WEC applicable facility emissions which will no longer be eligible for the exemption due to noncompliance, the EPA is finalizing that for facilities in industry segments for which the facility is defined at the hydrocarbon basin level in 40 CFR 98.238 only the emissions from a "site" (*i.e.*, well-pad or gathering and boosting site) with noncompliance would lose exemption. See discussion in section II.D.2.f. of the preamble to the final rule for the EPA's rationale on this change from proposal. For the other industry segments, the EPA is finalizing as proposed that any NSPS OOOOb or EG OOOOc noncompliance within the WEC applicable facility results in the entire WEC applicable facility losing the regulatory compliance exemption. See discussion in section II.D.2.f. of the preamble to the final rule for more details and for the EPA's rationale.

Second, regarding the comment that that once the provisions of EG OOOOc are in effect via an EG OOOOc-implementing state or Federal plan, that Congress intended for companies to no longer be subject to the WEC, the EPA disagrees with the commenter. See Comment and Response 9 in section 5 of this response to comment document regarding a sunset date for the

WEC. Compliance with the provisions of CAA section 111(b) and (d) are required by CAA section 136(f)(6)(A) and the continuation of WEC charges (when compliance is not met) is an important incentive to maintain methane reductions required by those rules. Further, the EPA notes that there are industry segments not regulated by the NSPS OOOOb or EG OOOOc which may have WEC obligations under the final rule.

To the extent that the comment that the EPA should revise definitions in subpart W is within the scope of this rulemaking, which the EPA does not concede, the agency disagrees with this comment and refers the commenter to section II.A.1. of the preamble to the final rule. While the EPA is not revising definitions in subpart W, the EPA is finalizing a unique approach for the portion of the WEC applicable facility affected by noncompliance specific to the onshore production and gathering and boosting industry segments based on comments received. See the discussion in section II.D.2.f. of the preamble to the final rule.

5.5.2 Extending exemption to industry segments if regulated under CAA 111(b) and (d) in the future

Comment 1: Commenters (0284, 0327-A1) agreed with the Agency's proposed approach for applying the regulatory compliance exemption to additional potential industry segments in the future. Commenter 0327-A1 supported the EPA's proposal to first evaluate any new regulation to determine equivalency before making the regulatory compliance exemption available. The commenter suggested that because the language in CAA section 136(f)(6) does not single out any particular set of section 111 methane standards for which compliance is required, any updated standards henceforth would fit within this statutory definition, so any affected source's failure to fully comply with those new requirements should disqualify it from receiving the exemption. The commenter further stated that the regulatory compliance exemption should only be available to facilities in segments covered by NSPS OOOOb/EG OOOOc, specifically, onshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting, onshore natural gas processing, onshore natural gas transmission compression, and underground natural gas storage. The commenter agreed that the EPA would have to promulgate additional 111(b) and (d) standards and make the requisite determinations under CAA section 136(f)(6)(A), before the regulatory compliance exemption could be applied to additional segments not currently covered under NSPS OOOOb/EG OOOOc, such as LNG storage and LNG import and export equipment.

Commenter 0284 believed the inclusion of future industry segments is required by the statute and logical and appreciates the breadth of the regulatory compliance exemption and the EPA's close adherence to the statutory mandate of the IRA in that respect.

Response 1: The EPA acknowledges the comment and is finalizing this approach as proposed.

5.6 Determining Eligibility with Respect to CAA Section 136(f)(6)(A)

Comment 1: Commenter 0906-A1 urged the EPA to exempt from WEC any emissions that are caused by third party excavation damages that are beyond the control of the facility. The commenter provided an example where a third party failed to request pipeline locations through a "One Call Program" prior to excavation, causing damages to buried transmission lines. The commenter noted that America's natural gas utilities invest an average of about $90 million daily to enhance the safety of distribution and transmission systems. The commenter held that when damage from a third party or another uncontrollable factor is the cause, the EPA should exempt such emissions from the facility's WEC obligation and noted that since these emissions are reported under the annual subpart W report, therefore would be relatively easy to cull out. The commenter suggested the EPA work with the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Common Ground Alliance (CGA) to identify criteria for facilities to demonstrate best efforts for assuring methane releases were truly caused by a third party.

Response 1: Congress created three exemptions to the WEC to reduce or eliminate the charge under certain circumstances. The EPA does not have the authority to add additional exemptions to the charge not identified by Congress, and accordingly the EPA is not finalizing any exemptions beyond the ones specifically enumerated in CAA section 136 (*i.e.*, plugged wells, unreasonable delay, and regulatory compliance exemption).

5.6.1 Proposed approach for determining eligibility

Comment 1: Two commenters (0276, 0905-A1) offered differing comments on the scope of the standards against which compliance will be determined. Commenter 0276 stated that the implementation of the regulatory compliance exemption should evaluate compliance only with the emissions limits and work practice standards in NSPS OOOOb and EG OOOOc (and state and Federal plans thereunder). This commenter opined that while the introductory clause of CAA section 136(f)(6)(A), viewed in isolation, speaks generally of "methane emissions requirements pursuant to subsections (b) and (d) of section 7411," these words must be read in context. The commenter pointed to the sub-provision at CAA section 136(f)(6)(A)(ii) which the commenter explained refers specifically to the November 2021 proposal (of what has recently been finalized as NSPS OOOOb and the accompanying EG OOOOc) and stated that these are the requirements to which Congress refers to in the root text of CAA section 136(f)(6)(A). The commenter also is concerned that assessing compliance against NSPS OOOOa will create confusion. The commenter explained that state plans should address the relationship between facilities that are NSPS OOOOa and those that are subject to the state EG OOOOc plan. The commenter pointed out that state plans will provide implementation timeframes for facilities to come into compliance with the EG OOOOc plans, and the EPA has appropriately concluded that those requirements only need be in place, not implemented, to qualify for the regulatory compliance exemption. However, to the extent that an NSPS OOOOa affected facility remains as such until actual implementation of the EG OOOOc requirements, there could be a period of time where NSPS OOOOa continues to apply after the EPA has signed off on the regulatory compliance exemption, stated the commenter. The commenter urged that NSPS OOOOa compliance should

not be part of the analysis in determining whether the regulatory compliance exemption is available during that period.

Contrasting to this comment, Commenter 0905-A1 supported that interpretation that the reference to "methane emissions requirements" in CAA section 136(f)(6)(A) unambiguously is a reference to standards applicable to sources in the oil and natural gas sector, which Congress understood to be prescribed by the 40 CFR part 60 subpart OOOO series of rules.

Response 1: The EPA is finalizing that WEC applicable facilities will be able to claim the regulatory compliance exemption once the final compliance date for applicable CAA section 111(b) and (d) facilities has passed in the state(s) and Tribal lands in which the WEC applicable facility is located. The final compliance date is the date at which all CAA section 111(b) and (d) facilities are required to comply with specified requirements pursuant to NSPS OOOOb or an EG OOOOc-implementing plan. See section II.D.2. of the preamble to the final rule and section 5.2 for responses to specific comments on this topic.

Further, as explained in section II.D.2.f. of the preamble to the final rule, the EPA is finalizing that the compliance status of CAA section 111(b) and (d) facilities contained within the WEC applicable facility will be assessed based on compliance with the applicable methane emissions requirements for subparts NSPS OOOOb and EG OOOOc, and not those in NSPS OOOOa. Also as discussed in section II.D.2.f. of the preamble to the final rule, the EPA is finalizing, as proposed, that should future CAA section 111(b) and (d) standards applicable to the oil and natural gas industry source category be finalized, compliance with the methane emissions requirements in those regulations will be assessed for determining continued availability of the regulatory compliance exemption.

Comment 2: Commenter 0327-A1 supported the EPA's proposed reporting and recordkeeping requirements, including the requirement that a facility's WEC filing include a representation of its compliance status with applicable requirements under the CAA section 111 OOOOb/c rule. The commenter also recommended that the EPA require facilities to file a complete compliance report encompassing the entire calendar year when applying for a regulatory compliance exemption. The commenter explained that given that the exemption is based solely on compliance and would apply to the full calendar year, it is reasonable for the EPA to require a showing of compliance for the entire calendar year. The commenter urged the EPA also to clarify how it will approach submissions of incomplete compliance reports and should assess penalties on filers who (1) make false representations of compliance or (2) operators who claim compliance without the timely submission of corroborating compliance reports.

Response 2: See the discussion in section II.D.2.h. of the preamble to the final rule.

Comment 3: Commenter 0294 provided what they considered to be several enhancements to the compliance certifications report. The commenter explained that commercially available advanced methane monitoring technologies could be a helpful tool for demonstrating exemption eligibility and suggested that operators seeking to demonstrate eligibility could submit empirical

data, such as data from advanced methane detection surveys, to supplement their compliance reports. The commenter believed that empirical data, ranging from field logs to alternative detection technology surveys, should be used to verify items such as monitoring frequency, presence of natural gas-driven controllers, and leak repair timelines. The commenter suggested that operators can use these data in corporate reporting, SEC filings, OGMP2.0 reporting, and remote emissions detection quantification, especially if verified by independent, technically accredited parties or relevant Federal and state agencies, to demonstrate compliance with Section 111 standards. Furthermore, the commenter urged the EPA to leverage Super Emitter Program third-party remote sensing data to quickly and easily ensure operators are compliant with super-emitter remediation, flare destruction efficiency, and other regulatory requirements.

Response 3: The EPA agrees that advanced methane monitoring and the Super Emitter Program (SEP) are valuable tools for determining whether excess emissions occur from oil and gas operations and encourages their use but is not adopting the Commenter's suggestions to require their use for purposes of determining compliance for purposes of the regulatory compliance exemption. Under subpart W, the EPA has signaled its intent to request input on the use of advanced measurement data and methods in subpart W through a white paper, workshop or request for information[10]. Further, the EPA notes that compliance with the NSPS/EG is evaluated under the requirements of those rules. While the regulatory compliance exemption relies on the compliance status with NSPS/EG, the EPA cannot add compliance requirements for the NSPS/EG, which is implemented under section 111 of the CAA, under the WEC rule, which is implemented under section 136 of the CAA.

Comment 4: Commenters (0267, 0291) stated that the EPA has access to the annual reports and compliance certifications required under NSPS OOOOb and EG OOOOc, therefore additional reports for the regulatory compliance exemption should not be required.

Response 4: Please see comment and response 3 in section 5.5.1.

5.6.2 Proposed no deviation standard for compliance determination

Comment 1: Commenter 0239 recommended that for purposes of implementing the regulatory compliance exemption, the proposed rule be revised to require compliance as of the reporting date for WEC filings, proposed as March 31. By doing so, they claimed the EPA would allow facilities that experienced de minimis compliance issues during a reporting year to return to compliance by the reporting date. Commenters asserted this approach better reflects the text of the IRA which does not refer to "deviations" and which states that the facility must (presently) be "in compliance" without making any similar statements about whether the facility "has been" in compliance for the entire reporting year. Commenter stated by taking this approach, the EPA would more accurately implement Congress's goals while also furthering the Agency's intention of actually incentivizing compliance with methane emissions reduction measures. The

[10] See 89 FR 42173 (Section II.P.6.b.)

commenter also stated that revisions to the WEC filings should not be considered disqualifying events either.

Response 1: The EPA disagrees that the final rule should interpret "in compliance with" as used in CAA section 136(f)(6) to refer to the compliance status of the facility as of the time of the WEC filing and is finalizing as proposed that the relevant compliance status is during the reporting year. The EPA agrees with the commenter's understanding that CAA section 136(f)(6) is intended to incentivize compliance with methane emissions requirements in CAA section 111(b) and (d), but believes the only logical implementation that achieves the intent of this provision is to align the period over which compliance with these requirements is assessed (on a quarterly basis) with the period over which applicable WEC charges are assessed (*i.e.*, the subpart W reporting period, or calendar year, as directed by CAA section 136(e)). Other implementations would not properly incentivize timely and continuous compliance. For example, under the commenter's suggested implementation a facility could exhibit serious non-compliance resulting in excess methane emissions during the reporting year, but provided they were in compliance at the time of WEC filing they would be able to exempt these non-compliant emissions from charge. Additionally, 40 CFR 60.5420b(b) allows 90 days from the end of a compliance period for submission of an annual report (*i.e.*, reporters are not required to make representation of their compliance status at a specific point-in-time during a compliance period until up to 90 days later), which would not align with the commenter's suggestion to determine contemporaneous compliance at the time of the WEC filing. See also the discussion in section II.D.2.f. of the preamble to the final rule regarding the EPA's rationale for evaluating the eligibility for the regulatory compliance exemption on a quarterly basis.

The EPA disagrees that the eligibility for the exemption should not include revisions after the reporting deadline and is finalizing this provision as proposed. See discussion in section II.D.2.h. of the preamble to the final rule for the EPA's rationale in finalizing these provisions. The EPA believes assessment of eligibility for the regulatory compliance exemption should be made based upon the most accurate information available of a WEC applicable facilities compliance with the methane emissions requirements under CAA section 111(b) and (d). The EPA notes that the revised reporting deadline under this final rule is expected to reduce the frequency at which a WEC applicable facility would need to resubmit a WEC filing related to the regulatory compliance exemption. See section 7.2 of this response to comment document and section III.A.2. of the final preamble for a discussion of the finalized reporting deadline under this rulemaking.

Comment 2: Many commenters (0172, 0193, 0202, 0208, 0212, 0216, 0229, 0230, 0239, 0268, 0270, 0271, 0272, 0273, 0274, 0276, 0279, 0278, 0280, 0282, 0283, 0284, 0285, 0287, 0289, 0290, 0291, 0298, 0299, 0434, 0866, and 0905) opposed the EPA's proposal regarding the "no deviation" standard when determining eligibility with the regulatory compliance exemption. Many commenters (0279, 0202, 0280) are concerned that the interpretation will result in a legal impossibility, rendering the regulatory compliance exemption a null set.

Several of the commenters (0202, 0208, 0216, 0212, 0229, 0230, 0239, 0268, 0273, 0274, 0276, 0278, 0283, 0298, 0866, and 0905) stated that the EPA should interpret noncompliance to those

actions that have completed the full enforcement process. Commenter 0298 stated that any allegations of deviations or violations from an applicable requirement that are unproven, an alleged violation is under investigation, or there are compliance-related proceedings that are resolved by settlement agreements wherein owners or operators do not admit to noncompliance, the Agency should not consider such instances to be disqualifying events for this exemption. Commenter 0866 asked that the EPA maintain the WEC exemption for operators complying with CAA section 111(b) and (d) programs even in the presence of limited requirement deviations so long as there is no finding of negligence by a regulatory authority.

Commenter 0905 explained that the burden of proof is a key legal aspect of the regulatory compliance exemption, and the EPA has an obligation to explain the legal, policy, and factual basis for its interpretation that the facility has the burden of affirmatively certifying that the facility is "in compliance" in order to qualify for the regulatory compliance exemption. The commenter explained that a cornerstone of our legal system is that a person is considered innocent until proven guilty and which the commenter believed is reflected in the Agency's well-established enforcement practices, where a "notice of violation" or "finding of violation," which typically marks the start of a formal civil enforcement action, represents a mere allegation of a violation and is not a legally binding definitive finding of violation. The commenter concluded that such a definitive determination of noncompliance may be achieved only through adjudication or by admission of the liable party.

Commenters (0229, 0273, 0280, 0293, 0298, 0905) further noted that the term "deviations" is a term that does not necessarily connote a violation. By way of example, Commenter 0905 explained that the EPA's Part 71 Federal Title V permitting rules unambiguously provide that "[a] deviation is not always a violation." The commenter explained that under the Title V program, each permittee must submit an annual compliance certification, and that report must identify each deviation. Of note, the commenter asserted, the report does not require certification of "violations." Thus, the commenter concluded, "deviations" should not be covered by the rule and should not constitute a disqualifying event.

Other commenters (0273, 0279, 0283, 0287, 0289, 0905) who opposed the "no deviation" requirement suggested that the EPA should exclude violations that do not result in excess emissions. This same commenter and commenter 0279 also are concerned that even if an operator could demonstrate zero deviations, the risk of certification of zero deviations in the face of potential enforcement by the EPA renders the exemption too risky to claim.

Another set of commenters (0202, 0230, 0268, 0239, 0240, 0274, 0276, 0282, 0283, 0290, 0298, 0299, 0905) suggested that deviations from monitoring, reporting, and recordkeeping should not be applied for the purposes of the regulatory compliance exemption. Commenter 0276 believes that Congress intent was to incentivize facilities to reduce actual emissions and not to rely on process requirements (*e.g.*, monitoring, reporting, and recordkeeping) where the operator has met all quantitative limits and work practice standards. The commenter explained that this interpretation is in line with the calculation process for the charge which determines the charge based on the metric tons of methane emissions above the threshold requirement; a deviation in monitoring, recordkeeping or reporting will not impact this calculation, and thus should not

impact whether an operator is in compliance for the exception. The commenter also challenged the EPA to provide reasoning or support for why the variation in types of requirements means that they all must be considered in relation to the regulatory exemption for the methane emissions charge. The commenter stated that the EPA cannot merely point to the absence of definitional language, without considering the purpose of the statute; properly considering statutory purpose suggests that Congress did not intend that the regulatory compliance exemption required compliance with all requirements listed in the NSPS. Commenter 0905 rationalized that because CAA section 136(f)(6)(A) specifies that applicable facilities must be in compliance with "methane emissions requirements," the EPA should use the definition of "emission standard" at CAA section 302(k) which is "a requirement … which limits the quantity, rate, or concentration of emissions of air pollutants." Under that definition, explained the commenter, the term "methane emissions standard" must be interpreted to apply only to emissions reduction measures. Commenter 0239 urged the EPA in the final rule to not consider deviations from paperwork, recordkeeping, and other, non-emissions related requirements that do not impact a facility's actual methane emissions profile to be disqualifying.

Commenter 0282 provided suggested amendments to the regulatory text at 40 CFR 99.41(c) (deleted text is strikethrough; added text is underlined):

"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 of an applicable approved state, Tribal, or Federal plan in part 62 of this chapter, which could result in increased methane emissions, including ~~all~~ any applicable emission standard, work practice, and monitoring; r~~eporting; and recordkeeping~~ requirements."

Commenters (0289, 0291) took the stance that because reporting of deviations is required by the [NSPS and EG OOOOc-implementing state or Federal plan], a source which reports deviations is in fact in compliance with the rule. The commenter 0289 recommended that the EPA focus on specific violations at a facility or failure to report deviations as a condition for the loss of the WEC exemption. Commenter 0287 recommended that only significant violations should trigger the loss of the exemption.

Commenters (0212, 0240, 0274, 0278, 0279, 0280, 0284, 0287, 0289, 0290, 0298, 0299) suggested that "compliance" in CAA section 136(f)(6)(A) is more reasonably read to require "substantial compliance"[4] or "material compliance." Commenter 0299 stated that it is irrelevant that that Congress did not include "mitigating language" in describing compliance. The commenter noted that Congress also did not include heightening language like "strict compliance" or "full compliance." Instead, the commenter suggested, "compliance" "must be read in . . . context and with a view to [its] place in the overall statutory scheme."[11] Reading "compliance" in CAA section 136(f)(6)(A) to mean "perfect compliance" is inconsistent with Section 136 as a whole because it would, for all practical purposes, eliminate the exemption, warned the commenter. Commenter 0287 also supported a methodology which distinguishes

[11] *Roberts v. Sea-Land Servs., Inc*., 566 U.S. 93, 101 (2012) (citation omitted).

between "material compliance" and minor deviations. This commenter also urged the EPA to distinguish between deviations and violations and provide a broad safe harbor for timely corrective action to avoid the loss of the exemption. By way of example, the commenter explained that other Federal agencies take this approach; the Consumer Safety Product Commission (CPSC)[5] and the Department of Health and Human Services (HHS).[6] Commenter 0434 urged the EPA to the provide explicit compliance pathways for deviation to both NSPS subpart NSPS OOOOb and EG OOOOc that allow operators to remain exempt from the waste emission charge as long as the majority of sites do not have performance deviations in a reporting year.

Commenters (0276, 0289) suggested that the EPA should develop a threshold or percentage of compliance (only with respect to emissions limits and work practice standards) that a WEC applicable facility must achieve. Commenter 0289 suggested that if 95 percent of the affected facilities at a facility site report no deviations, the facility site would be considered in compliance with the regulatory compliance exemption. Commenter 0276 stated that the EPA must provide meaningful opportunity for operators to obtain the regulatory compliance exemption and flawless compliance should not be mandated in order to obtain the regulatory compliance exemption. By way of example, the commenter pointed to their comments on the NSPS OOOOb/EG OOOOc rulemaking relating to covers and closed vent system requirements. As the commenter understood those requirements, any emissions from the cover or closed vent system constitute a deviation/violation of the standard. The commenter noted that because these interdependent rulemaking times overlap, commenter do not yet have a full understanding of whether, if, and how these and other issues will be addressed by the EPA or in the courts in response to any reconsiderations or review petitions.

Response 2: See the discussion in section II.D.2.f. of the final preamble for the EPA's rationale for the final provisions, and specifically the EPA's rationale for why this final approach is appropriate given the statutory text and Congressional intent. As a general matter, the EPA is finalizing that any WEC applicable facility with deviations of the monitoring requirements, emissions limits, or standards (or surrogate parameters), operating limits (including operating parametric limits), or work practice standards identified in the compliance reports, will be considered out of compliance for the purposes of the regulatory compliance exemption. Additionally, any violations, as determined either through an administrative action taken by the Administrator or delegated agency or through a judicial action, of any requirement during the reporting year would be considered noncompliance for the purposes of the regulatory compliance exemption. Regarding the interdependence of the various rulemakings, please see Comment and Response 3 in section 17.4 of this response to comment document.

Comment 3: Commenters (0157, 0266, 0327-A1, 0936) supported the EPA's proposal 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 have no deviations or violations of the methane emissions requirements promulgated pursuant to the applicable NSPS or EG implementing state and Federal plans.

Commenter 0327-A1 requested that the EPA clarify that a facility is only eligible for the regulatory compliance exemption if in full compliance with all applicable NSPS, and state, Federal, or Tribal plans, and argued that if a facility has deviated from any of those standards or plans, the exemption should not be available.

Response 3: While the EPA acknowledges the comments in support of the proposal, the EPA is finalizing a narrower scope for the meaning of compliance for the purposes of the regulatory compliance exemption, in response to other comments received (see comment and response 2 and 4 of this section). See section II.D.2.f. of the final preamble for the meaning of compliance for the purposes of the regulatory compliance exemption in this final rule.

Comment 4: Commenter 0866-A1 stated that there could be many thousands of emissions sources with the potential to deviate from CAA section111(b) and (d) requirements within a single proposed WEC applicable facility and it is unlikely that the entire collection of sources will be in perfect compliance with the CAA section 111(b) and (d) requirements 100 percent of the time, no matter how diligent an operator is, and thus it is unreasonable to expect zero deviations. The commenter argued that there is a fundamental mismatch between the size domains of facility definitions in CAA section 111(b) and (d) implementation rules and the size domain of the proposed WEC applicable facility. The commenter is concerned that due to the realistic expectation that a small number of requirement deviations within WEC applicable facilities will occur, the proposed rule lacks a meaningful WEC regulatory compliance exemption.

Commenter 0289 stated that the regulatory compliance exemption could use information reported under 40 CFR 60.5420b(b) and remove any facility site from the WEC calculation as long as the affected facilities did not include any violation of the rule that results in excess emissions. The commenter is concerned that if the EPA does not do so, a single deviation under the rule could make operators in an entire basin ineligible for the regulatory compliance exemption. By way of example, the commenter provided that a deviation occurs when a pilot flame is not present for any five-minute time period. The commenter explained that while operators take proactive steps to ensure that pilot lights remain lit, or that pilot lights are re-lit when they go out, many different situations (*e.g.*, very strong winds or an equipment malfunction) can lead to a pilot flame not being present for a five-minute period. The commenter is concerned that under the EPA's current proposed interpretation, a simple deviation, which in almost all cases isn't under the control of the operator and happens at a facility that is not manned, this deviation of a single pilot flame being absent for five minutes would eliminate the WEC exemption and applicability to thousands of facilities across an entire GHGRP reporting basin. The commenter warned that once a single deviation occurs, an operator is no longer incentivized to comply for any of the other facilities within that reporting basin.

Several commenters (0212, 0216, 0239, 0240, 0272, 0276, 0278, 0289, 0298, 0905) suggested that the EPA disallow the regulatory compliance exemption only for affected facilities subject to the regulation (and which are in non-compliance), rather than the larger applicable facility (*i.e.*, entire basin). Commenter 0905-A1 believed that this approach comports with CAA section 136(f)(6)(A) because the term "compliance" necessarily only applies to the parts of applicable

facilities that are subject to subpart OOOO-series requirements. Moreover, the commenter explained, because the subpart OOOO-series of rules apply to discrete applicable or designated facilities, it is not reasonable or sensible to extend the consequences of a proven or admitted violation to equipment or operations beyond the applicable or designated facility that is in violation. The commenter is concerned that the EPA's proposal will deprive the regulatory compliance exemption of its intended effect, because even a single piece of equipment would make the entire reporting basin ineligible for an entire year. The commenter believed that the EPA's interpretation is inconsistent with Congress's clear intent that the exemption should provide a practical and meaningful way to avoid paying fees under the WEC while still achieving the methane reductions the WEC otherwise would incentivize. The commenter stated that the regulatory compliance exemption was intended by Congress to be a program flexibility that would reduce the fees paid under the WEC program. The commenter believed that the Congressional intent would be better effectuated by broadly applicable rules for implementing the regulatory compliance exemption rather than what they considered to be a highly constrained approach proposed by the EPA. The commenter believed that the EPA's justification for the proposed rules for implementing the regulatory compliance exemption is insufficient because the Agency failed to acknowledge, consider, and give full effect to the important role that Congress intended that exemption to play in mitigating the impact of the WEC program.

Similarly, commenter 0289 suggested that the EPA interpret the facility definition in line with the statute, "pursuant to subsections (b) and (d) of section 7411" and use reported data under NSPS OOOOb and EG OOOOc to exempt individual facility sites from the WEC calculations. The commenter recommended that the EPA should allow facility operators to claim the exemptions for their respective facilities as they are subject to requirements under NSPS OOOOb, EG OOOOc, or a state implementing plan, whichever enters into force first. Commenter 0288 also recommended that compliance reductions be proportionate to the entire facility so that one violation does not cause the entire facility to lose the compliance exemption. Commenter 0267 suggested that if the EPA retains deviations as violations in the rule, a more reasonable approach would be to allow for exemptions for individual facilities in lieu of a basin or sub-basin approach.

Response 4: In response to comments received, the EPA is finalizing revisions to the implementation of the regulatory compliance exemption. Regarding the comment that the size domain of NSPS OOOOb affected facilities and EG OOOOc designated facilities versus the WEC applicable facility limits the usefulness of the regulatory compliance exemption, see the discussion in section II.D.2.f. of the preamble to the final rule for the EPA's rationale. While the EPA is finalizing, as a general rule, that WEC applicable facilities are eligible for the exemption if they contain any CAA section 111(b) or (d) facilities, the EPA is finalizing a unique approach for WEC applicable facilities in the onshore production and gathering and boosting industry segments. Specifically, for these basin-wide facilities, that only the "site" (*e.g.*, well pad, gathering station) with noncompliance loses the exemption. This represents a change from the proposed approach, wherein the entire WEC applicable facility would lose the exemption for all WEC applicable facilities including WEC applicable facilities in the onshore production and gathering and boosting industry segments. Please see section II.D.2.f. of the final preamble and comment and response 4 in section 5.5.1. for a discussion of this change from proposal. For the

other industry segments covered by the regulatory compliance exemption, the EPA is finalizing, as proposed, that any NSPS OOOOb or EG OOOOc noncompliance within the WEC applicable facility results in the entire WEC applicable facility losing the regulatory compliance exemption. See discussion in section II.D.2.f. of the final preamble.

Regarding the concern illustrated by the loss of a pilot flame, the EPA is finalizing two categories of NSPS OOOOb and EG OOOOc requirements that will determine eligibility for the regulatory compliance exemption. See Comment and Response 5 in this section and the discussion in section II.D.2.f. of the preamble to the final rule for the EPA's rationale for these final requirements. Regarding the duration of noncompliance, the EPA notes that that because NSPS OOOOb and EG OOOOc do not provide specific direction on the calculation of the deviation duration, the deviation start and stop times included in NSPS OOOOb and state/Federal plan annual reports may be inconsistent and may not be reflective of the actual length of noncompliance. For the reasons explained in section II.D.2.f. of the preamble to the final rule, attempting to define a period of noncompliance would go beyond existing reporting requirements and impose additional burden on both the regulated industry and on the EPA. Therefore, any deviation of the two categories described in the final rule would result in the loss of the regulatory compliance exemption. The EPA proposed that any noncompliance would result in loss of the exemption for the entire year, but for the same reasons as discussed above (*e.g.*, reporting requirements for the duration of the deviation), the EPA is finalizing that WEC applicable facilities will lose the exemption on a quarterly basis in the event of noncompliance. See Comment and Response 5 in this section and the discussion in section II.D.2.f. of the preamble to the final rule for the EPA's rationale regarding these final requirements. Specifically, for the loss of the pilot light example, because pilot light monitoring is a monitoring requirement under the rule, it fits into the first category of requirements that will determine eligibility for the regulatory compliance exemption. Both OOOOb and OOOOc require deviation reporting when there is no indication of the presences of a pilot or combustion flame in any 5-minute period; therefore, a situation which leads to a pilot flame not being present for a 5-minute period would result in loss of the regulatory exemption during the quarter in which the deviation occurred.

Regarding the comment that the EPA should allow facility operators to claim the exemptions for their respective facilities as they are subject to requirements under NSPS OOOOb or an EG OOOOc-implementing plan, whichever enters into force first, the EPA is finalizing that the regulatory compliance exemption is available after the Administrator's determination in accordance with CAA section 136(f)(6)(A)(i) and (ii) have been made and the final compliance date has passed for CAA section 111(b) and (d) facilities in the state(s) or Tribal lands in which the WEC applicable facility operates. See the discussion in section II.D.2.b. of the preamble to the final rule for the EPA's rationale on the final provisions for the availability of the regulatory compliance exemption.

Comment 5: Commenters (0298, 0905) commented on the duration of the availability of the regulatory compliance exemption. Commenter 0905-A1 explained the "regulatory compliance exemption" is an exemption from paying fees and not an exemption from the WEC program. Thus, any proven or admitted noncompliance should preclude application of the exemption only

for the period that the noncompliance exists, argued the commenter. By way of example, the commenter explained that if a noncomplying event lasts for just one day, the exemption should be available for the remaining days of the reporting year. For the part of the year that the exemption is not applicable (in this example, for the one day), the owner or operator of the applicable facility should be required to pay a fee if emissions during that period exceed the applicable waste emissions threshold, explained the commenter. Commenter 0298 stated that notably, the statute uses the present tense "in compliance" and does not state that the facility must "have been in compliance" for all of the reporting year. So long as the applicable facility has achieved compliance when the WEC certification is required, the exemption should apply, stated the commenter. The commenter believed that such an interpretation is not only a more appropriate reading of the statute but will also incentivize owners and operators to address compliance issues in advance of their WEC obligations.

Commenter 0172 requested clarification from the EPA on how it will require operators to "demonstrate compliance [with NSPS OOOOb and EG OOOOc]" in order to become exempt from WEC fees. The commenter explained that they use technology which can identify emissions that would be classified as Super Emitters under the NSPS OOOOb definition of emissions. The commenter explained that in some instances, these 100 kg/hr emissions may result from a malfunction or anomaly at a wellsite, which would constitute non-compliance with the NSPS OOOOb rules. The commenter asked the EPA to consider clarifying whether a one-off event would be enough to put the compliance-based "off-ramp" from WEC fees at risk, or whether there would need to be some larger, more systemic issues in order for the compliance-based "off-ramp" to be removed as an option. The commenter offered that if it is this second path of more systemic problems, they suggest that the EPA offer a definition for how it intends to evaluate how operators "demonstrate compliance" for the purposes of WEC exemption.

Commenter 0271 suggested regulatory text changes to 40 CFR 99.41(c) (deletions in strikethrough, additions in underline, moved text in bold):

"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~~ of an applicable approved state, Tribal, or Federal plan in part 62 of this chapter~~,~~ ~~including.~~ All offshore applicable WEC facilities must have no air quality violations under the 30 CFR part 550. Compliance must be achieved with **all applicable emission standards, work practice, monitoring, reporting, and recordkeeping requirements.**"

Response 5: In response to the many comments received on this topic, the EPA is making several changes to the final rule to more closely align the time out of compliance with the loss of the regulatory compliance exemption and to specify how compliance will be determined for purposes of the regulatory compliance exemption. The EPA had proposed that any deviation would cause a facility to lose the regulatory exemption for the entire year. Although commenters requested that the facility lose the exemption for the exact amount of time out of compliance, as described in section II.D.2.f. of the preamble to the final rule, the EPA does not believe it is possible to track time out of compliance at that level of granularity. Instead, the EPA is

finalizing that the exemption would be lost on a quarterly basis. If the facility returns to compliance during the quarter, the facility can again avail itself of the regulatory compliance exemption in the next quarter, if no deviations occur.

The EPA also is finalizing two categories of NSPS OOOOb and EG OOOOc requirements that will determine eligibility for the regulatory compliance exemption; any self-reported deviation or violation from the monitoring requirements, emissions limits or standards (or surrogate parameters), operational limits (including operating parameter limits), or work practice standards; and any determination of a violation(s) in an administrative action taken by the Administrator or delegated agency, or through a judicial action of any applicable NSPS OOOOb or EG OOOOc-implementing state or Federal plan. Noncompliance with respect to either category will result in ineligibility for the regulatory compliance exemption. See the discussion in the preamble to the final rule at section II.D.2.f. for the EPA's rationale for these final requirements. The EPA also is finalizing equations to determine emissions attributable to the regulatory compliance exemption in section 99.43 of subpart D of the final WEC rule. Please see section II.D.2.g. for a summary of the final equations and the EPA's rationale. The use of advanced technologies is discussed in Comment and Response 5 of this section.

Regarding the suggested regulatory text changes to 40 CFR 99.41(c), the EPA is not making the suggested changes. Only WEC applicable facilities subject to CAA section 111(b) and (d) are eligible for the regulatory compliance exemption, therefore references to compliance with off-shore air standards in 30 CFR 550 is not appropriate. See the discussion in section II.A.1. of the final preamble regarding the final definitions in the rule, including "WEC applicable facility" and section II.D.2.e. for the application of the regulatory compliance exemption to WEC applicable facilities.

Comment 6: Several commenters (0202, 0212, 0230, 0268, 0276, 0283, 0299, 0866, 0905) expressed concern about how the use of advanced methane detection technologies or more frequent or rigorous monitoring will impact compliance determinations. These same commenters also expressed concerns that relying on self-reported deviations disincentivizes self-audits or self-investigation or unduly punishes operators who embrace a rigorous deviation reporting program. Commenter 0866 is concerned that operators who use the best leak detection and repair programs may be penalized for deploying those technologies to find and remediate infrequent requirement deviations. This commenter noted that the new source performance standards established according to CAA section 111(b) enable advanced technologies to be used for fugitive emissions monitoring and continuous compliance verification for covers and closed vent systems by confirming no identifiable emissions. If an emission is detected from this equipment, a requirement deviation is imparted, stated the commenter, and the commenter is concerned that more comprehensive emissions monitoring is likely to result in the identification of more requirement deviations. The commenter asserted that this is problematic because if there are any requirement deviations at a WEC applicable facility in a given year, the WEC exemption that would otherwise be provided for complying CAA section 111(b) and (d) programs would be rescinded.

Commenter 0239 urged that un-proven violations, particularly as the result of the super-emitter response program, should not prevent a WEC-obligated party from making use of the regulatory compliance exemption. Commenter 0434 stated that "no deviations" creates a disincentive for operators to use better technology to monitor for emissions because more detections would result in more deviations, directly causing a waste emissions charge when emissions thresholds are exceeded.

Commenter 0866 also pointed out that while compliance with the CAA section 111(b) and (d) requirements may bring operators below the emissions thresholds which cause WEC to apply (and making the regulatory compliance exemption less important), true methane emissions levels that will be achieved by the CAA section 111(b) and (d) program adherence has not been validated and the methane emissions levels determined from existing official frameworks are frequently demonstrated to be out of line with experimental evidence.

Commenter 0172 also encouraged the EPA to consider how the proposal [of no deviations] may create a perverse incentive for companies that are voluntarily and disclosing emissions in an effort to be good corporate citizens. The commenter is concerned that many of their clients conduct aerial surveys or conduct more frequent monitoring on a voluntary basis, which may identify emissions that exceed what is permitted. The commenter believed that operators which proactively find, fix, and disclose emissions are operating in a way that should be encouraged and not penalized or they may decide that they are better off being unaware of emissions that might lead to increased waste emissions charges.

Response 6: For the EPA's discussion of, and rationale for, the final requirements regarding noncompliance, see section II.D.2.f. of the preamble. The EPA addressed similar comments regarding the use of advanced methane detection technologies in the final rule for NSPS OOOOb and EG OOOOc.[12] Essentially, the EPA recognizes that emissions detected by advanced methane detection technologies could result in finding deviations from emission standards, but stresses that owners and operators have a legal duty to operate any affected facility in compliance with applicable standards, including emission limits, and affected facilities must be in compliance with the requirements of the rule at all times. Frequent detection of excess emissions by advanced monitoring technologies should not occur if control devices and other emission sources are adequately engineered to continuously meet applicable emission standards. Further, the EPA notes the subpart W amendments and WEC rule are promulgated to implement direction under CAA section 136 from Congress to accurately quantify and assess WEC on W reported emissions.

5.6.3 Exclusion of WEC applicable facilities below the waste emissions threshold

[12] See November 23, 2023, "Response to Public Comments on the November 2021 Proposed Rule and the December 2022 Supplemental Proposed Rule," Volume II Section 5.1.2 "Incentivize Advanced Technology."

Comment 1: Commenters (0284, 0327-A1) agreed with the EPA's proposal that the regulatory compliance exemption would only apply to WEC applicable facilities whose emissions surpass the waste emissions threshold.

Commenter 0905 suggested that facilities that are not yet producing any oil or gas for sale, but are in the process of being constructed, are not wasting methane or losing it as a result of routine operations, and therefore should not be assessed any fees during the construction period. The commenter explained that emissions that occur during this period are primarily combustion emissions associated with the drilling rig or other fuel combustion sources necessary for the construction. While there will be minor amounts of methane generated during well testing prior to bringing the well online but those emissions are temporary, minor, and unavoidable, explained the commenter. The commenter believed an exemption is warranted because new facilities are focused on early adoption of methane emissions reduction practices during the design stage, and do not benefit from the incentives intended by WEC. These new more efficient facilities are expected to have emissions falling below the specified thresholds after start-up and once production begins, explained the commenter. However, during construction/preproduction years, they are unable to utilize the waste emissions threshold calculation to demonstrate that, warned the commenter. As an alternative, the commenter suggested that a later reporting applicability could be considered for facilities in pre-production phase that are designed with early adoption of methane emission reduction practices and technologies, similar to treatment of delineation wells under subpart W:

"You may delay the reporting of this data element if you indicate in the annual report that wildcat wells and/or delineation wells are the only wells included in this number. If you elect to delay reporting of this data element, you must report by the date specified in 40 CFR 98.236(cc) the total number of hours of flowback from all wells during completions or workovers and the well ID number(s) for the well(s) included in the number."

Response 1: Regarding the availability of the regulatory compliance exemption to WEC applicable facilities below the waste emissions threshold, the EPA acknowledges the comment. Regarding the comment that facilities which are not producing any gas during a construction period, the EPA is not finalizing any exemptions beyond those provided in CAA section 136 (*i.e.*, plugged wells, unreasonable delay, and the regulatory compliance exemption). The EPA also notes that CAA section 136 directs the EPA to use subpart W facilities, and neither W nor CAA section 136 delineate facilities under construction.

5.7 Reporting and Recordkeeping Requirements

Comment 1: Commenters (0199, 0208, 0279, 0298, 0905-A1) submitted comments expressing concerns with the EPA's proposed reporting and recordkeeping requirements. Commenter 0905-A1 stated that consistent with their comments opposing the proposal that any deviation would eliminate eligibility for the regulatory compliance exemption, WEC facilities should not have to submit a compliance certification as part of their application for the exemption. Similarly, commenters (0199, 0208, 0298) stated that the availability of the regulatory compliance

exemption should not rely on self-reported deviations. Commenter 0199 suggested that once in place, the EPA should only evaluate compliance with emission limits and work practice standards and suggested limiting the provisions to which the compliance demonstration applies and limiting non-compliance to those that have completed the full enforcement process. Commenter 0279 stated that the IRA does not require its submittal, and requiring operators to submit a compliance certification will dissuade operators from applying for the regulatory compliance exemption, which is contrary to the language and intent of the IRA.

Commenters (0276, 0289, 0905-A1) expressed concern that the Proposed Rule at 40 CFR 99.42(d) appeared to require an owner or operator to submit information related to implementation of the regulatory compliance exemption even in cases where the owner or operator does not seek to claim the exemption. The commenters explained that because compliance certifications are not needed for any purpose under the WEC except to demonstrate eligibility for the regulatory compliance exemption, the requirement to prepare and submit certifications should not extend beyond facilities for which the exemption is sought. The commenters pointed out that imposing an unneeded and unwarranted broadly applicable compliance certification obligation also would unreasonably expose owners/operators to enforcement liability.

Commenter 0291 stated that additional reporting beyond the annual NSPS OOOOb and EG OOOOc reports should not be necessary for demonstrating compliance, because the EPA already has access to these reports and certifications, and additional reporting requirements would be redundant.

Response 1: Regarding the meaning of compliance for purposes of imposing the WEC, the EPA has made a series of modifications from proposal which allows certain deviations from NSPS OOOOb/EG OOOOc without loss of the regulatory compliance exemption. See the discussion in section II.D.2.f. of the preamble to the final rule for the EPA's rationale for these changes. See also comments and responses in section 5.6.2 of this response to comment document for other comments and responses on the proposed no deviation standard for the compliance determination.

In response to commenters' argument that facilities which do not wish to claim the regulatory compliance exemption should not have to submit compliance certifications, we agree. The EPA notes that the final rule does not include reporting requirements for the regulatory requirement exemption for WEC applicable facilities that are not eligible or otherwise choose not to use the exemption. See discussion in section II.D.2.h. of the preamble to the final rule for this change from proposal.

Finally, regarding the comment that facilities should not have to make any reports beyond that required under the NSPS OOOOb and EG OOOOc-implementing state or Federal plans, see section 5.5.1.

Comment 2: Commenter 0327-A1 supported the EPA's proposed reporting and recordkeeping requirements, including the requirement that a facility's WEC filing include a representation of its compliance status with applicable requirements under NSPS OOOOb/EG OOOOc. The commenter also recommended that the EPA require facilities to file a complete compliance report encompassing the entire calendar year when applying for the regulatory compliance exemption. The commenter explained that given that the exemption is based solely on compliance and would apply to the full calendar year, it is reasonable for the EPA to require a showing of compliance for the entire calendar year. The commenter urged the EPA also to clarify how it will approach submissions of incomplete compliance reports and should assess penalties on filers who (1) make false representations of compliance or (2) operators who claim compliance without the timely submission of corroborating compliance reports.

Response 2: See the discussion in section II.D.2.h. of the final preamble for the final reporting and recordkeeping requirements for the regulatory compliance exemption, including final requirements which clarify the basis for determining the CAA section 111 facilities for which submission of compliance reports is required. The EPA does not believe that the burden associated with creating a separate calendar year compliance report for WEC applicable facilities under part 99 is warranted, as the information needed to make the certifications exists through the NSPS and EG OOOOc-implementing state or Federal plans reporting requirements. However, because the reporting year for the WEC and the annual compliance reporting under the NSPS and EG OOOOc-implementing state or Federal plans s may not align, the EPA is finalizing, as proposed, methodologies for several scenarios, including; 1) representing compliance status when a full year of compliance reporting is not available, 2) submitting two annual reports each covering a portion of the year, and 3) initial compliance phases. These include a revised WEC filing anytime the WEC applicable facility is unable to submit an annual report covering the entire reporting year under part 99. See discussion in section II.D.2.h. of the preamble to the final rule for a discussion of these provisions.

Comment 3: Commenter 0294 provided what they considered to be several enhancements to the compliance certifications report. The commenter explained that commercially available advanced methane monitoring technologies could be a helpful tool for demonstrating exemption eligibility and suggested that operators seeking to demonstrate eligibility could submit empirical data, such as data from advanced methane detection surveys, to supplement their compliance reports. The commenter believed that empirical data, ranging from field logs to alternative detection technology surveys, should be used to verify items such as monitoring frequency, presence of natural gas-driven controllers, and leak repair timelines. The commenter suggested that operators can use these data in corporate reporting, SEC filings, OGMP2.0 reporting, and remote emissions detection quantification, especially if verified by independent, technically accredited parties or relevant Federal and state agencies, to demonstrate compliance with Section 111 standards. Furthermore, the commenter urged the EPA to leverage Super Emitter Program third-party remote sensing data to quickly and easily ensure operators are compliant with super-emitter remediation, flare destruction efficiency, and other regulatory requirements.

Response 3: The EPA agrees that advanced methane monitoring and the Super Emitter Program (SEP) are valuable tools for determining whether excess emissions occur from oil and gas operations and encourages their use by affected sources and designated facilities but is not adopting the suggestions to require their use for purposes of determining compliance for purposes of the regulatory compliance exemption at this time. Under subpart W, the EPA has signaled their intent to request input on the use of advanced measurement data and methods in subpart W through a white paper, workshop or request for information.[13] Further, the EPA notes that compliance with the NSPS OOOOb/EG OOOOc is evaluated under the requirements of those rules. While the regulatory compliance exemption relies on the compliance status with NSPS OOOOb/EG OOOOc, the EPA is not adding compliance requirements for the NSPS OOOOb/EG OOOOc under the WEC rule.

Comment 4: Commenters (0267, 0291) stated that the EPA has access to the annual reports and compliance certifications required under NSPS OOOOb and OOOOc, therefore additional reports for the regulatory compliance exemption should not be required.

Response 4: Please see comment and response 3 in section 5.5.1.

Comment 5: Commenter 0273 requested that the EPA allow for the use of the regulatory compliance exemption for facilities demonstrating compliance with NSPS OOOOb for the full reporting year in which the rule becomes effective for ease of recordkeeping and reporting.

Response 5: The EPA is finalizing a state-by-state approach for implementing the regulatory compliance exemption. See the discussion in section II.D.2. of the preamble to the final rule for the EPA's rationale for this change from proposal. Consistent with this is the availability of the regulatory compliance exemption in each state, in the calendar year which includes the final compliance dates for both the NSPS OOOOb standards and EG OOOOc-implementing plans, in the state or Tribal area with an approved plan. However, even after the regulatory compliance exemption is available in a particular state or Tribal area, the WEC applicable facility still must qualify for the exemption, by being in compliance with the requirements established under the NSPS OOOOb and the EG OOOOc-implementing plan, as applicable, in each calendar quarter in the year in which the WEC applicable facility's emissions exceed the waste emissions threshold. See the discussion in section II.D.2. of the preamble to the final rule for the EPA's rationale for the timing for the availability of the regulatory compliance exemption and for determining eligibility for the regulatory compliance exemption.

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

Comment 1: Commenter 0327-A1 supported the approach that all WEC applicable facilities would lose access to the regulatory compliance exemption if either of the conditions in CAA section 136(f)(6)(A) ceased to apply after the EPA made an initial determination that the conditions were met. The commenter recommended that the EPA further clarify the criteria that

would trigger an evaluation as to whether the conditions in section 136(f)(6)(A)(i) and (ii) continue to apply. While the commenter believed that the EPA includes several helpful examples of when the conditions would cease to apply, including if a state plan were legally challenged and vacated after the initial determination (voiding a previous affirmative finding of the "all states" condition under section 136(f)(6)(A)(i)), or if methane emissions requirements under section 111(b) or (d) were modified such that they no longer achieved equivalent emissions reductions to the 2021 proposal (voiding a previous affirmative finding of the "equivalency" condition under section 136(f)(6)(A)(i)), the commenter provided additional suggestions, including evidence of widespread violations or nonenforcement.

Commenter 0221 opposed the EPA's proposal to revoke regulatory compliance exemptions nationwide if just one state were to have its plan challenged and vacated, and argued that the exemption should only be lost for facilities in the applicable state. The commenter also suggested that if an exemption were to be lost, the WEC penalties should be pro-rated to apply only to that portion of the calendar year in which the exemption was no longer justified.

Response 1: The EPA is finalizing a state-by-state approach for implementing the regulatory compliance exemption. See the discussion in section II.D.2. of the preamble to the final rule for the EPA's rationale for this change from proposal. Under the state-by-state approach, a vacated plan in one state or Tribal area would not affect the status of exemption in other states. However, as discussed in the preamble of the final rule at section II.D.2., under a state-by-state approach, if circumstances occurred such that a state plan was no longer approved and in effect, for WEC applicable facilities that span multiple states, access to the exemption would be lost if the EG OOOOc-implementing state or Federal plans for any of the states or Tribal areas in which the WEC applicable facility is located were no longer approved and in effect.

Regarding the duration for the loss of the exemption when the one or more of the criteria in section 136(f)(6)(A) are no longer met, after review of comments, the EPA is finalizing an approach wherein if either of the conditions in section 136(f)(6)(A) ceased to apply, WEC applicable facilities would lose access to the exemption for the full calendar year in which the criteria were no longer met. For the EPA's discussion of this change, see section II.D.2.i. of the preamble to the final rule.

The EPA provided other example criteria in which the criteria of section 136(f)(6)(A) could cease to apply, in section II.D.2.h. of the proposed preamble and agrees there may be other reasons why the EPA may determine that the exemption would no longer be available, because the EG OOOOc-implementing state or Federal plan no longer met the criteria of section 136(f)(6)(A). The EPA is not providing additional criteria at this time, as it is not possible to finalize an exhaustive list of reasons that the statutory criteria may cease to apply for a particular period of time.

Comment 2: Commenter 0266 offered language they believed would improve the rule to be more explicit regarding the concept that without the regulatory compliance exemption, facilities are subject to the WEC charge. The commenter suggested the following language:

"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 ***and the WEC shall be imposed on that WEC applicable facility****."* (added language underlined and bold)

Response 2: The EPA notes that even in the absence of the regulatory compliance exemption, another exemption such as plugged wells or unreasonable permitting delay outlined under section 136 may apply to exempt a particular facility from the charge.

6 Plugged Well Exemption

Comment 1: Commenters 0327-A1 and 0534 recommended that the EPA should consider how it will reassess the fee if it comes to light that a well was not permanently plugged, or that the well was not plugged in accordance with applicable state and Federal regulations after the initial verification process. Commenter 0327-A1 stated that because Congress required that a well be "permanently" shut-in and plugged for emissions to be exempted, the EPA should establish a pathway to reassess the fee if it deems required elements were not ultimately met.

Response 1: The EPA acknowledges the commenters' recommendation that the EPA consider how it will reassess the charge for WEC applicable facilities that qualify for the plugged well exemption if it is found that the well was not properly plugged. If the recalculated WEC obligation is greater than the original WEC obligation owed by the WEC obligated party due to the reassessment of the plugged well, the EPA would charge the WEC obligated party for the remaining balance of the WEC. See section III. of the preamble for additional details.

Comment 2: Commenters (0149, 0153, 0192, 0294) supported the EPA's proposal for a plugged well exemption and stated when operators seek an exemption for plugged wells, they must clearly demonstrate that their wells have been properly plugged and are no longer polluting. Proper well closure is important to prevent unmanaged greenhouse gas emissions and other environmental impacts that may affect local communities. Improperly closed or abandoned wells may indefinitely leak methane at significantly higher rates than properly plugged wells and contaminate public groundwater sources and the surrounding surface environment.

Response 2: The EPA acknowledges the commenters' support for the plugged well exemption and the need to demonstrate that they have met the applicable well closure requirement. WEC applicable facilities are required to provide a certification by the designated representative for the WEC obligated party that all identified wells were closed in accordance with state, local, and Federal requirements. See section II.D.3. of the preamble for additional details. Comments regarding how the EPA will reassess the WEC filing, which includes wells that were not properly plugged, are addressed in section III.B.1. of the final rule preamble.

Comment 3: Commenter 0298 stated general support for the proposed plugged well exemption but recommended that the Agency format any final metering requirements for the exemption such that they align with those established by state oil and gas agencies, as well as the BLM. In

doing so, the EPA would standardize its metering requirements and ensure consistency and clarity for regulated industry.

Response 3: The EPA acknowledges the commenter's support for the plugged well exemption. WEC obligated parties are required to meet final metering requisites found in applicable local, state, and Federal closure requirements. Please refer to section II.D.3 of the preamble and 40 CFR 99.51 of the final rule regarding compliance for the plugged well exemption and all applicable closure requirements.

Comment 4: Commenter 0231 stated that the plugged well exemption was minor as it only applies to a relatively small percentage of emissions but that it threatens to create an incentive for operators to increase plugging and abandonment operations if it is more profitable to claim the exemption from the WEC than it is to produce and sell oil and natural gas from a marginally producing well. The commenter further stated there is potential for Tribal wells to be disproportionately impacted as operators may choose to plug wells that are subject to certain Bureau of Land Management (BLM) rules and practices on spacing and approval of communitization agreements.

Response 4: The EPA acknowledges the commenter's statement that the plugged well exemption could create an incentive for operators to increase plugging operations. However, the EPA did not include additional exemptions from those that are detailed in CAA section 136. The plugged well exemption is detailed in CAA section 136(f)(7).

6.1 Determination of Applicability

Comment 1: Commenters (0905-A1, 0239) stated that the proposed rule was incorrect to exclude facilities that are below the waste emissions threshold from being able to exclude emissions associated with plugged wells. Commenter 0239 noted that the phrase "emissions that exceed the waste emissions threshold" appears in the permitting delay exemption but does not appear in the plugged well exemption, indicating that Congress did not intend to put a similar limit on this exemption. Commenter 0905-A1 asserted that the proposed implementation is not supported by the clear statutory requirement that "charges shall not be imposed" for emissions associated with plugged wells because it precludes the netting of emissions attributable to plugged wells.

Response 1: The EPA disagrees with the commenters' statements that the rule should not exclude facilities that are below the waste emissions threshold from the plugged well exemption, but notes that only facilities with emissions that exceed the waste thresholds will be subject to charge in the first place.

6.1.1 Inclusion of underground natural gas storage wells

Comment 1: Commenters (0180, 0221) recommend that the plugged well exemption be considered not only for wells in production industry segments but also for storage wells. The

commenters stated that despite different emission profiles associated with storage wells, efforts to plug and abandon wells of all types should be considered when determining exemptions.

Commenters (0283, 0299) asserted that the proposed rule narrows the scope of wells covered by the exemption without identifying any statutory authority or offering sufficient justification for this approach. The commenters noted that the statutory text speaks of "any well," without limitation or qualification.

Commenter 0283 stated that the EPA's proposed interpretation of the plugged well exemption conflicts with the provision's text, which is broad and does not either itself contain any limitation to the breadth of "any well" nor direct the EPA to impose any such limitation. The commenter contrasted this absence of direction to the EPA with the multiple uses of the phrase "as determined by the Administrator," including the final words of CAA section 136(f)(7), "shut-in and plugged in the previous year in accordance with all applicable closure requirements, as determined by the Administrator," which the commenter stated affords the Administrator some degree of administrative discretion with respect to what closure requirements must be observed, but not with respect to the scope of which segments' wells are covered by the exemption.

The commenter stated that while production wells may differ in some respects from underground storage wells, they did not believe there is indication that Congress was speaking only of the former in the exemption provision. The commenter noted that Congress distinguished industry segments from one another at CAA section 136(d), (f)(1)-(3), but made no such distinction or limitation at (f)(7).

The commenter further stated that it is unclear what the following words in the proposal mean: "underground storage wells, which are generally replaced with new storage wells then they are plugged and abandoned." The commenter stated that if the EPA is saying that underground storage wells are not plugged and abandoned as often as are production wells, that may mean that fewer wells in the underground storage segment will satisfy the conditions for receiving the exemption—but that is no reason to deny the exemption to those that would otherwise qualify for it.

Response 1: The EPA agrees with the commenters' suggestions and has expanded the provisions in 40 CFR 99.50(b) in the final rule to include underground natural gas storage wells in the exemption for permanently shut-in and plugged wells. See section II.D.3 of the preamble to the final rule for additional discussion regarding these topics.

Comment 2: Commenter 0327 stated support for the proposed implementation of applying the exemption to wells in the onshore and offshore petroleum and natural gas production industry segments and not to wells in other segments (*e.g.*, underground storage wells). The commenter stated that Congress limited the exemption to wells that are "shut-in", that "Shutting in" a well means ceasing its production, and that underground storage and other types of wells are not production wells, and therefore cannot cease to produce or be "shut-in" ever. The commenter

concluded that Congress thus did not direct the EPA to include these types of non-producing wells in the exemption.

The commenter further stated that there is good policy reason to think that Congress did not intend to exempt emissions from underground storage wells. The commenter asserted that while shut-in and plugged wells are generally associated with lower emissions than active wells, underground storage wells are known to continue emitting large releases after being plugged. The commenter concluded that given the large amount of emissions that can come from plugged underground storage wells and that the plugged well exemption was intended to serve as an incentive to permanently shut-in and plug wells, Congress could not have intended to qualify this segment.

Response 2: The EPA acknowledges the commentor's recommendation to exclude underground storage wells from the plugged well exemption, but disagrees with their conclusion and has expanded the exemption to include underground storage wells. See Section II.D.3 of the preamble to the final rule for additional discussion regarding these topics.

6.1.2 Proposed interpretation of "all applicable closure requirements"

Comment 1: Commenter 0180 stated that the applicable well closure/plugging requirements are all that need to be met to qualify for this exemption and asserted that other aspects of closure, such as notifications, reporting, site remediation and other post-closure activities, are not relevant to methane emission levels and should not be factored into the exemption decision-making process. The commenter stated that using this methodology will reduce the administrative burden on WEC obligated parties and the EPA.

Response 1: The EPA acknowledges the commenter's support for the applicable well closure/plugging requirements and the EPA is finalizing that portion of the rule as proposed.

Comment 2: Commenter 0239 agreed with the approach in the proposed rule that owners or operators will satisfy the definition of "all applicable closure requirements" if they have "met all applicable Federal, state, and local requirements for closure in the jurisdiction where the well is located." The commenter stated that traditionally, assessing whether wells have been properly shut-in, plugged, and abandoned has been an area of state regulation and that the proposed implementation aligns with principles of Federalism.

Response 2: The EPA acknowledges the commenter's support for the approach for well closure/plugging requirements to be based on Federal, state, and local requirements. The EPA is finalizing that portion of the rule as proposed.

Comment 3: Commenters (0154, 0155, 0157, 0160, 0161, 0163, 0165, 0167, 0174, 0181, 0184, 0190, 0218, 0225, 0227, 0294, 0335, 0530, 0536, 0703, 0849) recommended that the EPA include a requirement that when operators seek an exemption for plugged wells, they must clearly demonstrate that their wells have been properly plugged and are no longer polluting.

Commenter 0292 opposed allowing facilities to claim the shut-in and plugged well exemption for 2024 emissions (reported in 2025) using an estimated percentage and recommended that the EPA require well-level data for onshore wells that will be mandatory for the EPA reporting in 2025 under the proposed "Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems" rule.

Commenter 0294 expressed concern that the plugged well exemption as proposed does not require any subsequent inspections to ensure that there are not leaks.

Response 3: In the Final Rule, the EPA added a reporting requirement, 40 CFR 99.51(b)(4), of a certification by the designated representative for the WEC obligated party that all identified wells were closed in accordance with state, local, and Federal requirements. 40 CFR part 60, subparts OOOOb and OOOOc include well plugging requirements for NSPS and EG that WEC obligated parties who qualify for the plugged well exemption must adhere to. These requirements include providing notification prior to commencing plugging operations, conducting a survey of the well site after plugging operations have ceased, and subsequent survey requirements until the well is found to no longer be emitting. Additionally, most states have state plugging requirements that facilities must adhere to and demonstrate compliance by conducting post-closure measurements to ensure that the wells are no longer emitting. Additionally, WEC exemption claims are based on 40 CFR part 98 data. Using this data, exemption claims are not based on an estimated percentage of subpart W data, they are based on well-level emissions data collected under 40 CFR 98.236.

Comment 4: Commenter 0221 agreed with the proposed rule language that the exemption can be applied with the actual closure and plugging of the well such that potential emissions have ceased, rather than waiting for other notification, site remediation, or when other administrative aspects of well closure are met. The commenter asserted that these other aspects are not relevant to methane emission levels and should not be factored into the exemption decision-making process.

The commenter stated that the EPA has taken on a large increase in responsibility with the oversight of the implementation of the NSPS OOOOb and EG OOOOc rules (including the super emitter program, approvals for alternative technologies, oversight of states developing plans, etc.) and now the management of this proposed WEC program. The commenter asked the EPA to assure the states that they have been provided with the funding and staffing to manage these new programs.

Response 4: The EPA acknowledges the commenter's support for the rule language on well closure/plugging requirements that allows for the exemption to be applied when a well is plugged. The EPA is finalizing this portion of the rule as proposed.

6.2 Calculations of Exempted Emissions

Comment 1: Commenters (0229, 0231, 0267, 0268, 0273, 0278, 0283, 0291, 0905) disagreed with the proposed scope of emissions eligible for exemption from plugged wells. Commenter

0229 stated that the seemingly straightforward exemption for plugged wells received a textual overhaul in the proposed rule. They commented that the statutory text, “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” at 42 U.S.C. 7436(f)(7) is not represented in the proposed rule. The commenter noted that if a well is plugged in accordance with closure requirements, it should be exempt. However, the commenter felt that there was “a totally different and inconsistent formulation in the Proposed Rule”. Instead of an exemption for “any” plugged well, the commenter states that the EPA eliminates seven of the nine industry segments from eligibility. The commenter stated that the Proposed Rule makes no attempt to ground this finding on anything in CAA section 136 and because it fails to show fidelity to CAA section 136, this added requirement exceeds the agency’s authority and must be dropped.

Commenter 0268 stated that the EPA should expand the exemption for permanently shut-in and plugged wells to include all methane emissions from all equipment and processes that were associated with the permanently shut-in and plugged wells.

Commenter 0273 requested that all categories associated with a plugged well be exempted. The commenter stated that for emission sources dedicated to the plugged well alone (*e.g.*, a storage tank), emissions can easily be attributed to the well. The commenter asserted that the act of plugging wells may result in emissions reported under subpart W (*e.g.*, the proposed large emission event category or blowdown emissions) and stated that if these emissions are subject to the WEC, there would be a disincentive to plug wells as this would add additional cost to well closure.

Commenter 0278 stated that the EPA should allow WEC obligated parties to account for all emission sources at permanently shut-in and plugged wells for netting purposes. The commenter explained that the law does not specify or limit what emission sources can be used for netting at these sites, and owners and operators of these types of wells are complying with requirements that cover various emissions sources (*e.g.*, pneumatics, tanks, and flares) and are reporting this information if they are subject to subpart W. The commenter believed that WEC obligated parties should be allowed to account for emissions from all sources at these sites, not just the limited emission sources from wellhead equipment leaks, liquids unloading, workovers with hydraulic fracturing and workovers without hydraulic fracturing.

Commenter 0283 stated that the proposed implementation narrows the scope of wells covered without identifying any statutory authority or sufficient justification and excludes emissions that are directly attributable to permanently shut-in and plugged wells. The commenter stated that the word "from" in the statutory phrase "the emissions rate from any well” can have multiple meanings and asserted that the EPA's interpretation was equivalent to "through" or "at" while it should be read as equivalent to "resulting from" or "associated with." The commenter asserted that emissions from ancillary equipment, including tanks, pneumatic devices, and pneumatic pumps are directly attributable to production from plugged and abandoned wells and should be eligible for exemption. The commenter stated that often this equipment can be associated with a single well, or alternatively, where the equipment is associated with a well pad the proportionate emissions may be easily allocated to a plugged and abandoned well.

Commenters (0267, 0291) proposed that the exemption for plugged wells should include removed sources such as pneumatic valves or any equipment associated with that well or group of wells which would recognize the totality of emissions reduction efforts.

Commenter 0905 requested that the EPA expand the methane emissions eligible for the exemption to all methane emissions from all equipment and processes that were associated with the permanently shut-in and plugged well. The commenter stated that the alternative implementation should be finalized to allow owners/operators to quantify the emissions reductions from other on-site sources attributable to the well closure including the following: emissions from natural gas driven process controllers on the wellheads (*e.g.* emergency shutdown, plunger-lift controls) and emissions associated with the storage vessels that may now have reduced throughput because of the well closure.

Response 1: The EPA acknowledges the commenters' recommendation to expand the methane emissions eligible for the plugged well exemption to include emissions from additional sources than those proposed. The EPA is finalizing as proposed that only wellhead emissions are eligible for the plugged well exemption. However, the EPA is expanding from proposal the plugged well exemption to include other emissions sources reported on the wellhead level for the onshore and offshore petroleum and natural gas production sectors. This includes all subpart W emissions sources that can be attributed to an individual well. See section II.D.3. of the preamble for additional details. The EPA is not expanding from proposal the exemption to include emissions from non-wellhead equipment that are co-located on the well-pad because the statutory text does not reference emissions from other sources that may be co-located with a plugged well. The EPA also expanded from proposal the provisions in 40 CFR 99.50(b) of the final rule to include underground natural gas storage wells in the exemption for permanently shut-in and plugged wells.

Comment 2: Commenter 0327-A1 supported the proposed calculation methodology. The commenter stated that the proposed calculation methodology provides clear parameters for emissions that would quality for exemption consistent with the language of CAA section 136(f)(7) by defining a plugged well as one that has been "permanently sealed to prevent any future leakage" and exempting emissions from plugged wells that occurred in the previous calendar year.

The commenter further supported exempting well-level emissions calculated from (1) wellhead equipment leaks, (2) liquids unloading, (3) workovers with hydraulic fracturing, and (4) workovers without hydraulic fracturing. The commenter stated that Congress limited the exemption for plugged wells to equipment that has been permanently "shut-in" and "plugged." Thus, any equipment that is still active and emitting after the plugging of an individual well should still be subject to the fee in future years, as a matter of statutory language. The commenter stated that this means that equipment shared by plugged wells and unplugged wells – including compressors, separators, and flares - would not be calculated in the exemption since they would continue to be active in the years after plugging. The commenter also stated support for not including production-related equipment or equipment associated with treating production

streams generally (*e.g.*, AGRU, dehydrators, and separators) since the associated emissions are minimal.

Response 2: The EPA acknowledges the commenter's support for the calculation methodology for wells that are permanently shut-in and plugged. To be more consistent with CAA section 136(f)(7), the final plugged well exemption includes all subpart W emissions attributed to an individual well, so the exemption better accounts for emissions associated with an individual well. See section II.D.3. of the preamble for more additional details on changes from proposal regarding the calculation methodologies.

Comment 3: Commenters (0180, 0221) recommended that an option be provided for WEC applicable facilities to use a facility-specific value for barrels of oil equivalent since this value may vary across facility locations in various portions of the country.

Response 3: The EPA acknowledges the commenters' recommendation that WEC applicable facilities have the option to use a facility-specific value for barrels of oil equivalent. The EPA is finalizing as proposed the use of a default value of 6,000 scf/barrel. This default value is commonly used in the oil and gas industry to reconcile quantities of oil and gas to a single unit basis, including by the United States Geological Survey and the Energy Information Administration. While a facility-specific value may deviate from this default value, the EPA anticipates that such deviations would have minimal impacts on the magnitudes of methane emissions qualifying for exemption calculated using equations E-2 and E-3 as there is a limited range of plausible values for barrels of oil equivalent and the finalized equation includes this default value in both the numerator and denominator of the calculation. If the EPA were to allow the use of a facility-specific value, additional detailed reporting and recordkeeping requirements would need to be included to substantiate how the value was derived for the average annual heat content of both the oil production and natural gas production. In consideration of the significant reporter burden this would entail for minimal impacts on calculated exempted emissions, the EPA has finalized the rule without inclusion of reporting of a facility-specific value.

Comment 4: Commenter 0271 requested that in proposed equation E-4, the terms $Q_{cond,PW}$ and $Q_{cond,WAF}$ be removed to be consistent with the Inflation Reduction Act (IRA) and BSEE reporting. The commenter stated that oil and condensate production is sent onshore via single combined pipelines and that the IRA and the BSEE do not differentiate between oil, condensate, and natural gas. The commenter further noted that 40 CFR 98 subpart A defines "sales oil" as produced crude oil or condensate measured at the production lease automatic custody transfer (LACT) meter or custody transfer tank gauge. The commenter explained that LACT meters are installed on an offshore platform to measure the volume of oil sent to the pipeline and that the meters do not measure oil or condensate separately. As such, the commenter asserted that there is no feasible method of measuring these two liquid hydrocarbons individually.

Response 4: The EPA acknowledges the commenter's request and has updated from proposal the final rule to remove $Q_{cond,PW}$ and $Q_{cond,WAF}$ as they were contingent upon proposed provisions in the subpart W rulemaking, 40 CFR 98.236(aa)(1)(iii)(E) and 40 CFR 98.236(aa)(1)(i)(D), which were not finalized as proposed in that separate rulemaking. The EPA has updated from the

proposal for this part 99 rulemaking the final equation to be consistent with language in 40 CFR 98.236(aa)(1)(iii)(D) and 40 CFR 98.236(aa)(1)(i)(C) and replaced the equation terms with $Q_{oil,PW}$ and $Q_{oil,WAF}$, respectively.

6.3 Reporting and Recordkeeping Requirements

Comment 1: Commenter 0905-A1 stated that the EPA must avoid reporting and recordkeeping requirements that are duplicative with other well closure requirements. They commented that well closure requirements are within the jurisdiction of State Oil & Gas Commissions and other agencies, not the EPA. They commented that the level of information that the EPA is proposing under 40 CFR 99.51(a)(3) that operators submit "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." is unnecessary to verify the exemption and adds no environmental benefit under the WEC because it creates an opportunity for operators to inadvertently miss a citation. The commenter stated that the EPA should remove this list of citations from the reporting requirements.

Commenter 0239 stated that the analysis to support demonstrating emissions attributable to a plugged well appear unnecessarily onerous. They recommended that the EPA not burden entities seeking this exemption with excessive reporting requirements.

Response 1: The EPA disagrees with the commenter's assertion that the well closure requirements are onerous and duplicative with other well closure requirements. As noted in section II.D.3.c. of the preamble to the final rule, the EPA requires this information for the verification of plugged well exemption eligibility and of exempted emission quantity. The facilities who qualify for the plugged well exemption are still held to the well plugging requirements under 40 CFR part 60, subpart OOOO as well as state and local plugging requirements to ensure that the wells that qualify for the exemption are no longer emitting.

Comment 2: Commenter 0327 stated that the EPA can improve its proposed verification process. The commenter noted that the EPA proposed to require that operators report total plugged well emissions at a facility. To improve public transparency, incentivize accurate reporting, and make its verification procedures more efficient, the commenter stated that the EPA should require that operators also report calculation inputs and methodologies rather than just the result of their calculation. Additionally, the EPA should strengthen the showing of compliance with state and Federal regulations. Instead of simply requiring a certification statement by the designated representative, operators should be required to submit a certificate of compliance from the state in which their well resides and – for Federal requirements – the EPA's compliance office.

The commenter also stated that the EPA should require a demonstration of compliance with reporting requirements, since they allow state and Federal agencies to verify and track plugging. They noted that the EPA commented that reporting requirements may increase, which may lead to recalculations of the WEC. They suggested that the EPA can resolve this by requiring compliance with reporting rules during the applicable year in which the well was plugged.

Response 2: The EPA agrees with the commenter's recommendation that the EPA improve its verification process from the proposal. WEC applicable facilities that claim the plugged well exemption are required to utilize the methodologies as described in 40 CFR 99.52 which are based upon calculation inputs that are reported under subpart W of 40 CFR part 98. See section II.D.3.b. of the preamble to the final rule for additional details regarding additional reporting requirements and the calculation of exempted emissions from permanently shut-in and plugged wells.

7 WEC Reporting Requirements

Comment 1: Commenter (0273) stated that the WEC proposes a reporting obligation at the operating entity level, which conflicts with the GHGRP's reporting obligation at the parent company level. The commenter stated that this creates an additional burden on reporters, causing them to prepare reports in two formats. The commenter requested that the EPA make the appropriate revisions to the WEC to ensure the reporting format will align with the GHGRP and require reporting on the parent company level.

Response 1: The reporting obligation under this final rule has been finalized, as proposed, to apply to the WEC obligated party, which is defined, in part, as the owner or operator of a WEC applicable facility. See sections II.A. and II.B. of the preamble of the final rule for discussion of the final definition of "WEC obligated party" and the EPA's interpretation of CAA section 136(c) regarding the entity which is responsible for WEC obligation. Regarding the commenter's statement related to the GHGRP, without reopening those provisions, the EPA notes that 40 CFR 98.1 and 98.2 establish the reporting obligation for that part on the owners and operators of certain facilities.

7.1 Required Reporters

Comment 1: Commenter 0267 stated only the operator of the facility should be responsible for WEC charges and not all owners. They expressed the EPA has never required agreement amongst all owners for other regulatory fees and this charge is no different. They said it currently appears that for WEC applicable facilities that have more than one owner or operator, the WEC obligated party is an owner or operator selected by a binding agreement among the owners and operators of the WEC applicable facility.

Commenters (0239, 0267, 0298) stated that the proposed rule reads as the Owner or Operator of a WEC applicable facility on December 31 of the reporting year is the responsible party for paying the fee for the entire year. Instead, the commenters suggested that each owner or operator of the WEC applicable facility should be responsible for reporting emissions and making payment of WEC charge until the date of transfer of the WEC applicable facility's ownership to a subsequent owner and stated that subsequent owners do not have operational control of the facility until the date of transfer of ownership and it is unfair for the subsequent owner to be responsible for reporting and WEC charges. The commenters stated that the EPA thinks that reporting emissions by each operator and performing the WEC filing will be complicated for the calendar year when the ownership is transferred if reporting is separated, but asserted that on the

contrary, each operator will clearly understand this obligation and ensure accurate data is used to report the inventory and WEC filing.

Commenter 0298 suggested that WEC obligated parties responsible for WEC filings and fees for any reporting year should remain responsible for the accuracy of the payment, the filings, record retention, and responding to any subsequent requests from the EPA regarding the filings for that reporting year. Commenter 0267 suggested that if the EPA does choose to hold the new owner/operator liable for the previous owner's emissions, then a longer duration should be provided (up to a year) for the new owner to assess historical calculations and make corrections.

Response 1: See sections II.A. and II.B. of the preamble of the final rule for discussion of the final definition of "WEC obligated party" and CAA section 136(c) text regarding the entity which is responsible for the WEC obligation.

Regarding comment that each owner or operator of the WEC applicable facility should be responsible for reporting emissions and making payment of WEC charge until the date of transfer of the WEC applicable facility's ownership to a subsequent owner, the EPA disagrees. The EPA requirements as finalized under this rule align reporting requirements under part 99 with those under subpart W. See section 17.5 of this response to comment document for response to similar comments. As noted in that section, without reopening those subpart W provisions, the recommendation that multiple reports be submitted for assets that are transferred during a reporting year was raised in comments on the recent subpart W rulemaking and was addressed in section III.A.1.b. of the preamble to the final subpart W rule. The EPA reiterates for purposes of this part 99 rulemaking the position that commenters did not identify specific issues with the current structure supporting the contention that it leads to inaccurate reporting of emissions data. Rather than ensure accurate reporting as the commenter claimed, the EPA believes that preparation and submission of multiple reports by different entities related to the same emission sources would lead to duplicative burden and raise the potential for inconsistencies in reported data.

The EPA is finalizing with clarifying revision 40 CFR 99.7(e)(6) regarding responsibility for revisions to WEC filings remaining with the original WEC obligated party in situations where a WEC applicable facility changes ownership. Regarding comment that the WEC obligated parties responsible for WEC filings and fees for any reporting year should remain responsible for the accuracy of the payment, the filings, record retention, and responding to any subsequent requests from the EPA for that reporting year, general requirements, and assessments for WEC filings are addressed in section III. of the final preamble.

7.2 Reporting Deadlines

Comment 1: Commenters (0180, 0221) recommended additional time be given to WEC obligated parties to file their reports and that a May or June deadline for part 99 reporting would be more reasonable and avoid increasing paperwork burden. The commenters asserted this would

be especially critical during the initial years of the program when companies and the EPA are learning a new system.

Commenters **(**0193, 0199, 0202, 0208, 0230, 0276) asserted the proposed reporting deadlines associated with the WEC are unreasonable and should be revised in two important ways:

- The WEC filing and payment deadline should be 30 days (Commenter 0230 stated 20 days) after the EPA concludes the Agency's subpart W data verification activities or November 1 of each year, whichever comes later.
- The proposed deadline to disallow part 99 resubmissions after November 1 of the year following the reporting year should apply to the EPA requests for revisions in addition to operators' voluntary resubmission.

Commenters asserted that these revisions will avoid cycles of payments and refunds and give the EPA more time to verify GHG emissions reports prior to collecting payment.

Commenters (0210, 0212, 0289) suggested a WEC filing and fee payment date of November 1. Commenter 0210 stated this would allow the EPA to complete validation of subpart W filings before the WEC payment obligation is required. The commenter stated that operators typically engage in several months of correspondence regarding subpart W reporting verification, and with the upcoming changes to subpart W reporting, they anticipated that this process would take even longer in the first few years of the program as operators work with the agency to file under the new methodologies. The commenter stated that the WEC filing would be made after the EPA freezes subpart W data for public release, which would give stakeholders more oversight into the WEC process. Commenter 0212 stated the EPA's proposed approach for the payments of the Methane Tax is unjustified and flies in the face of historic filing issues with the GHGRP. The commenter stated that while any reductions in emissions would allow for a rebate, increases would have penalties applied to them and asserted that this approach is unnecessary given the history of the GHGRP.

Commenter 0211 stated that requiring an operator to complete and submit WEC filings and process WEC monetary obligations on the same day that the emissions that the WEC is based upon are reported will be impractical for operators and is an unreasonable burden. The commenter suggested that the proposed rule be modified to set the reporting and submission deadlines associated with the WEC to be 30 days after the EPA concludes the Agency's subpart W data verification process or November 1 of each year, whichever comes later, and to have the WEC obligation due on December 1 of each year so that any recalculations of GHGRP data can be implemented in an industry member's WEC payment.

Commenters (0224, 0268) contended that reporting deadlines associated with the WEC are unreasonable, and the EPA must establish a workable timeline between subpart W reporting and validation and WEC filing and validation. The commenters stated that the WEC filing should occur only when subpart W reports have been validated to avoid an untenable cycle of additional payments or refunds. Commenter 0268 emphasized this would provide the EPA time to verify

GHG emissions reports prior to collecting payment and suggested interest and penalties should not be imposed on updated WEC filings and payments resulting from the EPA validation of subpart W or WEC. Commenter 0224 indicated discrepancies between payments and reporting validation will impose an additional financial burden on Ohio independent producers.

Commenter 0239 expressed concern that the Proposed Rule's approaches to the timing and potential penalties associated with WEC filings are overly punitive and fail to reflect the fact that implementation of the WEC program, especially in its initial years, will likely be complex and difficult for the oil and natural gas industry to navigate. The commenter relayed based on experience with the existing subpart W GHG reporting program, the process for verifying information submitted to the Agency often takes multiple months and can be followed by additional periods for necessary revisions, despite best efforts to accurately calculate emissions and opined that Congress's direction in the IRA to revise subpart W demonstrates just how difficult it has been to use the program and the challenges of precisely determining methane emissions from operations.

Commenter 0239 suggested that the EPA continue to make initial WEC filings without the fee due on March 31 alongside subpart W reporting data in order to give the Agency and regulated community time to adjust and verify information. They agreed with the EPA that using March 31 for initial filings would allow the regulated industry to coordinate with and be on the same schedule as the information reported under subpart W with the same deadline. Given the interrelated nature of the WEC Program and subpart W, using a unified submission and review timeline and process will benefit both the industry and government.

The commenter stated that the proposed system for reporting, resubmission, and penalties adds unnecessary difficulties to an already complex, and still evolving, set of reporting requirements. The commenter suggested rather than create a system that will inevitably lead to recalculations, refunds, and interest payments that would strain the Agency's resources and create unnecessary friction with our industry, the EPA should simply require WEC payments to be made on November 1 at the completion of the verification process.

Commenter 0271 requested an extension of the filing deadline to November 1 for emissions from the preceding calendar year. They expressed this extension will grant WEC obligated parties additional time to address any perceived discrepancies identified in the March 31 emission data submission and to complete WEC calculations and filings.

Commenters (0272, 0905) stated that in order for a designated representative to certify the WEC filing, additional checks on all calculations, including all subpart W calculations, would be necessary prior to submitting the WEC. Setting the WEC filing deadline to be the same as the subpart W reporting deadline effectively pushes up when operators would need to complete the subpart W calculations because the WEC filing can only be completed after all subpart W reports are completed by an operator and additional lead time is needed to process the payment to go with the WEC filing. Therefore, commenter offered the following alternative timeline:

- Operators submit emissions reports pursuant to subpart W by March 31 for the prior calendar year emissions, as required under 40 CFR part 98.
- The proposed WEC filing deadline should be delayed until November 1 under proposed part 99.
- The delay to November 1 for the WEC filing provides the EPA time to conduct preliminary verification on reported values, which increases certainty on the regulated community. This timeline also coincides with the usual schedule of when the EPA publicly publishes subpart W data within the FLIGHT database and in other publications after conducting their initial validation/verification process.
- The additional time also allows operators to assess and review their WEC filing and estimate their fee.

Commenter 0276 also stated under 40 CFR 98 subpart W, GHG emissions and data are due to the EPA on March 31 of the following year and that historically, the EPA continues to review and require changes to subpart W submissions months and even years after the submittal deadline. The commenter noted that Congress has not given the EPA direction with respect to when the Agency should require obligated parties to submit their WEC payments and said the EPA's proposed rule does not acknowledge Congress's silence in this respect, nor does it give any explanation for proposing to align WEC payment dates with subpart W filing dates. The commenter asserted requiring companies to submit the WEC filing and remit applicable WEC obligation on the same day will result in numerous instances of refiling and confusion - particularly as implementation of revised subpart W requirements and provisions occurs.

Commenter 0278 asserted that the proposed WEC filing, and obligation date is not practical or workable. The commenter stated in consideration of revisions to subpart W reports, the WEC filing, and obligation date should be set at November 1 to allow time for all subpart W corrections to be resolved and allow the WEC to be based on accurate emission data. The commenter stated this would simplify the WEC filing and obligation process, reduce and/or eliminate needless revisions to WEC filings, reduce unnecessary refiling fees, interest and/or penalties, and minimize work on both the EPA and the WEC obligated party. The commenter stated that nothing in the IRA requires the March 31 date to be the filing or obligation data. The commenter stated that a staggered WEC filing and WEC obligation timeline will also eliminate potential complications with the three types of financial sanctions (*i.e.*, two different potential interest payments and administrative penalties) that could result from a timely but inaccurate WEC obligation payment at the time of the WEC filing. The commenter acknowledged the EPA's desire to incentivize accurate reporting but stated that the reports that are required under subpart W and form the basis of the WEC filing are among the most extensive in the country as they can require thousands to tens of thousands of calculations for a single facility. The commenter stated that operators work diligently to file accurate statements, but there is an inherent risk of minimal and generally inconsequential mistakes based upon the shear extent and scope of reporting which are often further complicated by other dynamics such as mergers and acquisitions of companies and/or assets. The commenter stated that penalties should not be assessed due to good faith but erroneous efforts.

Commenter 0284 stated the EPA's proposed payment structure for the Methane Charge creates additional administrative burdens on both the EPA and industry members by creating an unnecessary two-part payment structure and suggested a November 1 deadline for all revisions to reports and a December payment deadline.

Commenter 0287 suggested the EPA revise the Proposed Rule to address fee payment and report revision. They noted under subpart W, reporters are obligated to verify the reports they submit and to resubmit corrected reports when a report contains a "substantive error." They communicated the EPA has proposed a similar system for WEC filings. They emphasized the WEC filings are, however, dependent to an extent on subpart W reports; thus, the EPA says that a WEC filing may not achieve verified status until all errors associated with subpart W reports that impact total WEC are corrected. The commenter supported as proposed that part 99 resubmissions would only be allowed up to November 1 of the year following the reporting year and that any part 98 resubmissions after this date that impact WEC calculations would not be required to be resubmitted in a revised WEC filing while facilities could continue to resubmit data under subpart W at any time. The commenter stated that this strikes an appropriate balance between regulatory certainty and assurance of data quality.

The commenter suggested that the Agency could also apply a threshold for materiality for submitting a revised WEC filing. Such a threshold could establish that resubmission of a WEC filing would not be necessary unless a specific percentage increase in the fee administered would result from the data adjustment. Commenter acknowledged this sort of safe harbor would provide additional regulatory certainty for WEC applicable facilities.

The commenter noted that if the EPA finalizes the Agency's proposal to establish a deadline for fee adjustment, that would also be an optimal time for requiring payment of the fee. For example, if the EPA establishes a one-year lookback period for WEC filing error correction, payment of the WEC at the end of that timeframe would make sense logically and administratively. The commenter suggested that even if the EPA does not take such an approach, the EPA should revise the Agency's proposed payment date for the WEC. The commenter stated that establishing a fee payment date that follows the final true-up date for assessment of the WEC would eliminate unnecessary administrative work on the part of regulated parties and would help to avoid or reduce the number of over and under payments that will result from a less streamlined payment structure. The commenter stated this is the approach frequently taken by states under similar programs, including annual air emissions inventory reporting and invoicing in Oklahoma and Minnesota.

Commenter 0287 stated that a December 31 payment date would allow for better coordination with NSPS OOOOb and EG OOOOc compliance reporting. For the NSPS OOOOb sources that triggered the rule prior to publication, the first compliance report will be due August 5, 2024 and annually thereafter.

Commenter 0289 suggested the EPA align reporting timelines within the WEC and GHGRP to minimize the burden on operators and the EPA. The commenter stated that the EPA does not

consider that the reporting deadline for the GHGRP is actually the starting point for the reporting and publication process, which often requires multiple iterations of corrections and clarifications, both at the request of operators identifying new information, and at the request of the EPA. The commenter asserted that by requiring simultaneous reporting the GHGRP and WEC filing and payment WEC, the EPA is needlessly increasing the burden on both operators and the EPA staff, who will now have to deal with recalculation, refunds, and potentially rectification of both the GHGRP data and the WEC charge. The commenter stated that a November 1 deadline would allow time for the EPA to identify errors within the GHGRP filing before operators submit their WEC obligation information.

Commenter 0290 suggested since there are already numerous Federal and state reporting obligations due March 31, the deadline for the WEC filing and fee payment be moved to June 30. They felt this would reduce the burden during the first quarter reporting period and also likely reduce filing amendments.

Response 1: After consideration of comments received, the EPA revised from proposal the WEC filing and payment deadlines under this final rule to August 31. The EPA is finalizing as proposed that any WEC obligation owed by a WEC obligated party is part of the submission of the WEC filing and both are to be due at the same time as discussed in more detail in section 7.3 of this response to comment document and section III.A.2. of the preamble to the final rule. Refer to section III.A.2. of the preamble for discussion of the finalized WEC filing and payment deadlines of August 31 of the year following the reporting year. The EPA deferred the WEC filing and payment obligation deadlines from March 31 (subpart W due date) to August 31 to allow time for subpart W data to be verified and errors resolved in advance of the WEC filing. This later deadline allows the WEC filing and payment to be based on verified and accurate emission data. The EPA verification process for subpart W typically concludes at the end of July or mid-August of each year. The majority of subpart W verifications have been completed by the August 31 deadline which simplifies the WEC filing and obligation process by reducing and/or eliminating recalculations or revisions to WEC filings due to revisions to subpart W data, reducing unnecessary, interest and/or penalties, and refunds; hence, minimizing the burden on both the EPA and the WEC obligated parties by reducing the back and forth between industry and the Agency.

As discussed further in section 7.4.1 of this response to comment document, the EPA requested comment on a November 1, 2025 due date for both the WEC filing and obligation and annually by November 1 thereafter. However, after considering comments received the EPA finalized using the August 31 deadline. The August 31 deadline allows filers time to correct calculations and/or revise any errors submitted under subpart W reducing the burden on both operators and the EPA. The EPA believes that by this timeframe the obligation could be correctly calculated. However, if a substantive error is discovered, a WEC filer must submit a revised WEC filing within 30 days of discovering that a previously submitted WEC filing contains one or more substantive error(s) as discussed in section II.D. of the final preamble. The EPA anticipates that the revised WEC filing schedule should allow for facilities to resolve any issues with subpart W reports in advance of the WEC filing and that threshold for marginality for WEC resubmissions suggested by the commenter would not be necessary.

The EPA disagrees with commenter's statement that the proposed deadline to disallow part 99 resubmissions after November 1 of the year following the reporting year should apply to the EPA's requests for revisions in addition to operators' voluntary resubmission. Pursuant to 40 CFR 99.7(e)(2)(ii) the EPA reserves the right to revise WEC obligations for a given reporting year after the December 15 final resubmission deadline if data errors are discovered by the EPA at a later date.

The EPA is finalizing a requirement that revisions to the WEC filing will be allowed through December 15 of the filing year except as described in 40 CFR 99.7(e)(2). See section III.A. of the preamble to the final rule for discussion of the finalized WEC filing requirements and schedule.

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 40 CFR 99.4 and any other credible evidence, in conjunction with a comprehensive review of the WEC filing, including attachments. The EPA anticipates completing WEC filing reviews within 60 days which will allow WEC obligated parties time to respond to inquiries from the Agency. The EPA intends to conduct audits of select WEC obligated parties and associated WEC applicable facilities. Information pertaining to audits is discussed in more detail under section 11 of this RTC document. The EPA addresses commenters' concerns with regard to penalties in section 8 of this RTC document.

The EPA agrees with commenters to the extent that this implementation, with the final deadlines, makes the most sense logistically. To the extent that comments on the reporting deadline referenced concerns related to the verification of data reported under this final rule, see section III.A.4. of the preamble to the final rule for discussion of the finalized requirements related to verification and section 7.4 of this response to comment document. The EPA anticipates the majority of subpart W submittals will have completed the verification process by the August 31 date simplifying the WEC filing and obligation process as well as easing the burden on both the Agency and industry.

7.3 Submission of the WEC Filing

Comment 1: Commenters (0272, 0905) opposed the proposed requirement that payment should be included as part of the filing and suggested that payment should occur only when both subpart W and WEC filings have been validated to avoid a prolonged cycle of additional payments or refunds. The commenters stated that as proposed, the EPA has created an untenable timeline for processing data, making payments, validating data, and refunding partial payments. Instead, the commenters suggested the EPA make the reporting/validation/correction processes under the two programs wholly consistent, meaning that WEC filings should be based on validated subpart W data and the WEC payment should be due after the WEC filing has been confirmed by the EPA.

Commenter 0905 agreed with the proposal that any fee should be due in the same year the emissions are reported to not prolong uncertainty in capital planning associated with the fee. However, the commenter stated that the administrative burden of additional fee collection and

refunds due to fee corrections would be reduced by delaying payment until after the WEC filing, and suggested delay until November 1. The commenter also agreed with the EPA assertions that any subpart W report that is resubmitted after November 1 that impacts the WEC calculations would not necessitate a revised WEC filing. The commenter stated that companies often have lead times to have funds approved or checks issued and stated it is impractical for operators to complete their emission reports and be prepared to issue a check associated with the emissions quantified at the same time, especially given the additional calculations associated with the WEC framework (including exemptions).

Commenter 0235 requested that payment of the methane tax (Waste Emissions Charge) be due when the following year report is submitted. They conveyed delaying payment from the day when the report is due will enable operators to revise reports without the unnecessary exchange of funds because payment was remitted the same day that the report was submitted.

Commenter 0240 stated that the EPA's proposed payment deadline of March 31 each year is unreasonable. They stated the EPA allows modifications to the WEC filing to be made until November 1 annually. However, while any reductions in emissions would allow for a rebate, increases would have penalties applied to them. Commenter suggested this approach is unnecessary. The commenter stated that given the history of the GHGRP, the EPA knows there will likely be modifications needed for many filings, and consequently, a fair approach would be to delay the payment date until November 1 annually, after the cycle of annual revisions and verifications have been completed.

Commenter 0267 stated that the WEC fee should not be due on March 31, the same date the subpart W report is due. The commenter suggested that the fee should only be due on November 1 and the EPA should be obligated to complete their review of subpart W filing by the fee due date.

Commenter 0273 requested that any WEC payments due be remitted no sooner than 60 days after the applicable reporting deadline (May 30). The commenter expressed concern regarding the feasibility of the WEC filing submission due date being on the same schedule as the GHGRP subpart W because the WEC filing content requires calculations based on information reported under subpart W, reporters will need time to prepare the WEC filing following the subpart W due date of March 31. The commenter noted that the first quarter time period already requires significant environmental reporting, including state emission inventories, Title V inventories and compliance summaries, GHG reporting, state permit compliance reports (GP-5 and 5a), and some NSPS and NESHAP reporting. The commenter suggested a reporting deadline of November 1 to allow adequate time for preparation, review, and approval of emission fee calculations and payment preparation and submission. The commenter stated that because WEC payments potentially may be significant, time is needed after the submission of GHGRP reports to verify payment amount, obtain internal approvals, and arrange for payment; therefore, the commenter requested that the timeframe for any emissions payment be moved to at least sixty (60) days after the reporting deadline to provide needed time for the operator to remit payment while minimizing any errors that may result from the currently compressed timeframe.

The commenter suggested that if the initial WEC filing due date is not extended to November 1, then the due date for the WEC filing be extended at a minimum until after the e-GGRT validation process is completed.

Commenter 0276 suggested companies submit their WEC filings and the EPA should complete any verifications and/or audits before companies are required to submit their WEC obligation payments. They indicated the EPA has stated that companies must submit any revisions to their WEC filings by November 1 of the year after the reporting year (*i.e.*, approximately 7 months after the WEC filing). They said the EPA has also indicated that changes to the WEC filings (with limited exceptions for submitting exemption report information) cannot be made by the operator after the November 1 date. Commenter opined if this deadline is imposed on operators as a deadline after which revisions may not occur, that same deadline should apply to the EPA; thus, if the EPA does not request corrections before November 1, the GHG reported emissions are final. Commenter 0276 believed that any audits should be completed by the November 1 date. They conveyed that if the EPA does not adopt the proposal to complete audits by November 1, there must be a date certain by which the EPA can no longer conduct an audit, the EPA must have a basis to believe there are significant errors before requiring an audit, and the EPA should not impose any penalties for revised WEC obligations or should provide opportunities and bases for waiving any penalties.

Commenter 0289 suggested the rulemaking better synergize with timelines within the GHGRP. The commenter stated that although intuitively having the same reporting deadline seems like an appropriate timeline for requiring payment, the reality for most operators is that the finalization of the GHGRP report each year requires significant resources in terms of employee time and coordination and that most of the calculations within the WEC are also likely to be performed by those same employees that have the best knowledge of the data submitted to the GHGRP. The commenter suggested a delay between the finalization of the GHGRP data submission such that payment and data filing would be due after the data for each year, which would likely result in less significant revisions for three main reasons:

- First, given the resource stress already placed upon operator's employees in finalizing the GHGRP data, using the same deadline for the WEC filing further constrains those resources, with no real benefit to either the EPA or the operator. By allowing additional time to finalize the WEC obligation filing and payment, the EPA would reduce the currently unnecessary burden on operators.
- Second, the processing of payments, especially in what could be significant amounts for some operators, typically requires coordination with entirely separate groups within operators' organizations. Payment of contractors, taxes, and other payments are not typically handled within the environmental teams that are working on the GHGRP, and there are significant recordkeeping and reporting requirements for businesses and their accounting practices. The EPA's current proposal does not address or even seem to consider those impacts. By providing a delay between the two deadlines, operators can finalize their GHGRP data, rectify any data inconsistencies or errors identified by either

the operator or the EPA, then finalize their WEC obligation and go through the process of making payment available for the WEC.

- Finally, allowing a delay between the two deadlines gives the EPA and the operators the opportunity to evaluate and correct any errors in the GHGRP data prior to processing the WEC obligation and the payment. This reduces the paperwork burden on the EPA and the operators by reducing the possibility of back-and-forth revision of filings within the GHGRP and the WEC simultaneously. The EPA should make the deadline for the WEC filing and payment November 1 of each year to allow time for the EPA to identify errors within the GHGRP filing before operators submit their WEC obligation information.

Commenter 0291 stated that the proposed payment date of March 1, 2025 is impractical, particularly as operators have yet to align with the finalized subpart W rule expected later in the year and suggested the filing due date be shifted to November 1, 2025, followed by an additional 60 days to submit the required payment, aligning with the reasonable expectation that the EPA will have concluded the Agency's review of subpart W filings by this later date. The commenter stated that error corrections are also a point of contention with the proposed due date and that November 1 would be a more reasonable timeline. The commenter further stated that the responsibility for errors pertaining to acquired facilities should not carry over to a new owner, which would prevent punitive measures for issues outside a new owner's control.

Commenter 0298 recommended the EPA move the deadline for WEC filings to September 1, allow additional flexibility for WEC obligated parties to alter filings (including through substantive revisions) without penalty until November 1, and move the payment of WEC fees to on or after November 1. Regardless of the specific dates selected by the EPA, the commenter urged the EPA to revise the WEC Proposal so that payments associated with WEC filings would not be due until at least 60 days after such filings are submitted, and penalties for late filings would not begin to be applied until the Agency has finalized the inventory for the subject reporting year, in the event that responsible parties need to amend their WEC filings. The commenter asserted that given the newness of the WEC, as well as any potential complications introduced by the implementation of the subpart W Proposal, these changes would provide industry with necessary latitude to adjust to the WEC Program and ensure effective compliance. The commenter strongly recommended the EPA suspend financial penalties for such errors for the first five years of the WEC Program implementation to allow companies navigating the new and complex WEC Program to ensure they fully understand, and are able to effectively comply with, all the dimensions of this rule and the related subpart W and NSPS OOOOb/EG OOOOc rulemakings. They suggested this be done through regulatory text, rather than a discretionary enforcement policy which could be subject to change based on commenters understanding that the IRA-amended CAA does not provide for citizens to enforce the WEC Program via lawsuits, and the EPA gives no indication in the Proposed Rule that the Agency would interpret the statutory text this way.

Response 1: The EPA is finalizing as proposed that any WEC obligation owed by a WEC obligated party is part of the submission of the WEC filing and due at the filing deadline for the

reporting year. The EPA is finalizing a deadline of August 31 for the WEC filing, which is five months after the proposed deadline of March 31.

The EPA anticipates that with finalizing a later deadline for the WEC filing than what was proposed (*i.e.*, August 31 instead of March 31 of the year following the reporting year), much of the commenters' concerns are addressed. Historically, the majority of potential errors identified in subpart W data upon which the WEC filing is based are resolved by mid-August, and so the EPA anticipates that the majority of operators will not need to revise WEC filings due to corrections under subpart W. The EPA believes the suggestions by commenters of delaying the payment of WEC obligation until a later date (*e.g.* the year after the report is submitted) would fail to incentivize timely and accurate reporting under part 99 and would lead to significant implementation challenges for both the EPA and WEC obligated parties in the circumstances of facility transfers or bankruptcies.

Although the WEC filing and payment are both due on the same date, this later deadline allows the WEC filing and payment to be based on verified and accurate emission data. Subpart W reports are due on March 31, and the majority of subpart W verifications have been completed by the August 31 WEC deadline which simplifies the WEC filing and obligation process by reducing and/or eliminating recalculations or revisions to WEC filings due to errors in subpart W (As stated in section III.A. of the final preamble, the majority of the data used for WEC calculations are the facility-level methane emissions and hydrocarbon throughput volumes reported under subpart W.), reducing unnecessary interest and/or penalties, and refunds. The EPA verification process for subpart W typically concludes at the end of July or mid-August of each year and the data is "frozen."

As discussed in section 7.2 of this response to comment document, the EPA disagrees with commenter's statement that the proposed deadline to disallow part 99 resubmissions after the proposed November 1 deadline of the year following the reporting year should apply to the EPA's requests for revisions as well as operators. In addition, commenter stated that any audits should be completed by November 1. Pursuant to section 99.7(e)(2)(ii) the EPA reserves the right to revise WEC obligations for a given reporting year after the finalized December 15 final resubmission deadline if data errors are discovered by the EPA at a later date.

See section III.A.2. of the preamble to the final rule and section 7.2 of this response to comment document for further discussion of the August 31 deadline for WEC filings. Pursuant to 40 CFR 99.5 each WEC obligated party must submit their WEC filing including the information specified in 40 CFR 99.7 and remit applicable WEC obligation (including fee) no later than August 31 of the year following the reporting year. All filing revisions must be received according to the schedule in 40 CFR 99.7(e) to be considered for revisions to WEC obligations. Refer to section III.A.4. of the preamble to the final rule for discussion of the finalized requirements related to verification and section 7.4 of this response to comment document.

The EPA addresses comments on penalties in section 8 of this RTC document. The EPA addresses comments related to errors pertaining to acquired facilities in section 3.1.3 of this RTC.

Comment 2: Commenter 0327 largely supported the EPA's proposed content requirements for WEC filings and had the following suggestions to improve the collection of necessary information:

- First, they recommended that operators be required to include in their WEC filing all of the information necessary to calculate waste emissions thresholds and WEC applicable emissions, including inputs for equations and the methodologies used. They stated the EPA's proposal requires reporting the final results of these equations, but the Agency is not clear whether operators are required to include all of the inputs and elements of these equations in their WEC filing, how they should refer to the relevant data in their subpart W reports, or how operators must show that their calculations were accurately conducted in accordance with those provisions. In the interest of public transparency and the efficiency of the verification process, commenter recommended that the WEC filing include all elements necessary for calculating the final results and a demonstration of the calculations conducted.
- Second, they suggested the EPA make clear how operators should reference their subpart W reports and other outside information generally. Because the WEC filing will include different kinds of data—some of which rely on subpart W information and some of which doesn't—they stated the EPA should require operators to cite the source of information in their WEC filing.

Response 2: The EPA acknowledges the commenter's general support for the proposed contents of the WEC filing. As proposed and finalized at 40 CFR 99.7(b)(1)(iii), the WEC filing for a WEC obligated party includes a reporting identifier for each WEC applicable facility included in this report. This identifier can be used to link to data reported under subpart W of the GHGRP. Additionally, the EPA has finalized additional data elements in the WEC filing at 40 CFR 99.7(b)(2)(viii) through (xiii) including the total emissions of CO_2e, methane emissions, quantity of natural gas sent to sale, and quantity of crude oil sent to sale for each WEC applicable facility as reported pursuant to subpart W of the GHGRP. These data elements serve as the inputs to the equations to calculate the waste emissions threshold and WEC applicable emissions. Reporting of the methodologies used to determine these values is not required under part 99, as these data elements are determined and reported pursuant to the requirements of subpart W. Section III.A.3. of the final preamble discusses these data elements.

Comment 3: Commenter 0298 urged the EPA, against the backdrop of subpart W reported emissions being used as the basis for WEC fees, to set a period of time over which submissions for GHG reports would be considered final. Commenter stated in light of the WEC, owners and operators need regulatory certainty regarding their subpart W submission. They stated endless inquiries from the EPA to owners and operators, sometimes years after subpart W reports have been submitted, would be untenable as many of these requests are administrative in nature and do not result in impactful emissions calculation changes. As such, the Agency must ensure the final rule establishes clear deadlines for when facilities' emissions would be considered final and validated.

Response 3: Comments regarding the verification process and establishment of a set period of time limiting the resubmission of reports under subpart W of the GHGRP are outside the scope of this rulemaking. For discussion of the finalized requirements under this rulemaking related to the resubmission of WEC filings, refer to sections III.A.3. and III.A.4. of the preamble to this final rule. The EPA notes that a final deadline of December 15 has been established after which time no WEC filings initiated by a facility can be resubmitted. As discussed further in the preamble, this deadline applies even if the corresponding subpart W data is resubmitted for a historic reporting year for purposes of subpart W.

Comment 4: Commenter 0327 supported the EPA's timeline for collecting fees and WEC filings and the Agency's inclusion of a verification process for WEC filings. However, the commenter stated that the proposed rule does not provide specific details as to exactly how the EPA will verify all parts of the WEC filing and suggested that the final rule needs to explicitly set forth the EPA's intended verification process for all parts of the report which should be strengthened from the existing process for verifying subpart W reports The commenter asserted that trends in underreporting and false reporting under the Clean Air Act are well known and have been extensively documented and that there is specific evidence that operators have underreported their emissions under the GHGRP framework using the EPA's current verification process. The commenter stated that operators have underreported hours of operation for equipment in their subpart W reports, including for intermittent pneumatic controllers that were reported as operating for a small portion of the year (~100 hours) while the other equipment at the facility was reported to be operating for close to the full year and operators that have reported very low methane emissions from associated gas flaring.

The commenter stated that under the proposed rule some WEC filings could remain unverified well after November 1 since the EPA would only then begin considering whether to conduct a third-party audit, and stated this could result in operators avoiding fee payments for several months or altogether.

The commenter suggested the EPA contract for audits of all WEC filings to be conducted immediately after submission to ensure that measurement, methodologies, and analyses in both subpart W reports and WEC filings were all done properly. Auditors should be completely unaffiliated with operators and have relevant technical understanding of oil and gas operations and emissions monitoring. They suggested the EPA follow the "gold standard" for third party auditing and randomly assign auditors so that the company being audited cannot coordinate with the auditor ahead of time, while retaining responsibility for ensuring consistency across auditors. The commenter suggested the EPA partner with the EPA's Office of Enforcement and Compliance Assurance (OECA) to contract with these entities. After audits are complete, the EPA would then notify operators of the errors in the WEC filing and the updated WEC amount, issue an invoice (or refund) and any applicable penalties, and give operators 45 days to provide an updated WEC filing and payment.

The commenter suggested that if auditing all WEC filings is infeasible, the EPA audit WEC filings to the maximum extent possible with selectivity in auditing based upon factors including the type of filing; the likelihood of inaccuracy given the type of filing; the filer's history of filing

accuracy; whether an initial review of the filing indicates inaccurate or incomplete data; the severity of potential inaccuracies; and other factors. If an operator submits a filing with a substantive inaccuracy and does not self-correct, then all filings for facilities operated by that operator submitted during the following year should be automatically audited. This type of design may have the benefit of encouraging operators to submit accurate and robust WEC filings.

The commenter noted that comment was requested on an alternative approach for unverified reports in which the Agency would calculate the WEC based on conservative default values. The commenter stated that auditing could, in some circumstances, remove the need for this approach, but if the EPA finds an audit infeasible, is otherwise unable to verify on its own, or in situations where audits fail to resolve the verification issue, default values may still be useful.

Response 4: After considering all responses received, the EPA finalized the proposed rule to accommodate comments as discussed in the final preamble and auditing revisions.

Timeline: Pursuant to 40 CFR 99.5 each WEC obligated party must submit their WEC filing including the information specified in 40 CFR 99.7 and remit applicable WEC obligation (including fee) no later than August 31 of the year following the reporting year. All filing revisions must be received according to the schedule in 40 CFR 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. Please refer to section III.A.2. of the preamble to the final rule for WEC filing deadlines.

Verification: 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 40 CFR 99.4 and any other credible evidence, in conjunction with a comprehensive review of the WEC filing, including attachments. One commenter stated that trends indicated underreporting and false reporting under the Clean Air Act are well known and have been extensively documented and that there is specific evidence that operators have underreported their emissions under the GHGRP framework using the EPA's current verification process. The EPA acknowledges this comment. The subpart W comments are out of scope for this final WEC rule; however, both subpart W and the final WEC rule contain calculations for determining the obligations that are verified. Unfortunately, some sources under subpart W have gone unverified which is why the EPA finalized in section III.B.2. of the final preamble that if a WEC filing is unverified but the EPA is able to correct the error(s) based on reported data to part 98 and part 99, the Agency is finalizing as proposed that the EPA will recalculate the WEC using available information. Please refer to sections III.A. and III.B. of the final preamble and section 7.4.2 of this response to comment document for more verification details.

Audits: Due to the expense of third-party auditors, the Administrator performs the WEC verification process after the August 31 deadline (The majority of subpart W verifications have been completed by the August 31 WEC deadline.). Once the WEC verification process is completed, the EPA intends to conduct audits of select unverified WEC obligated parties and associated WEC applicable facilities. As discussed under section III.B. of the final preamble, the

EPA clarified that third-party auditors will primarily focus their review on resolving identified errors associated with part 98 and/or part 99 data elements required for calculation of the WEC that remain unverified, but the review would also include resolution of any additional errors identified during the course off their review. As defined in 40 CFR 99.8(c), these data elements may include records of total GHG emissions reported, facility methane emissions, facility hydrocarbon throughput, applied exemptions, and netting. Third-party audits may be required to be arranged by and conducted at the expense of the WEC obligated party. Information pertaining to audits is discussed in more detail under preamble section III.E. and section 11. of this RTC document.

The EPA addresses commenters' concerns with regard to penalties in section 8 of this RTC document.7.4 Verification and WEC Filing Revisions

Comment 1: Commenter 0327 provided several suggestions for improvements to the EPA's proposed approaches for verification and WEC resubmittals. The commenter suggested notations be included on updates to WEC filings in resubmissions. They stated the EPA's proposal requires operators to detail their errors; however, it is not clear if the EPA is proposing to require this in a separate document or in an updated WEC filing. The commenter stated that operators should include notations of any updates that have occurred in resubmitted WEC filings, for ease of transparency and final approval.

The commenter further suggested that if operators contest whether a substantive error is in their filing, they recommended that it not occur through a revised WEC filing, which requires resources to create. For efficiency purposes and to ensure the EPA is assessing the fee on the accurate amount of emissions as quickly as possible, commenter suggested the EPA discuss substantive errors with operators in a separate forum and then require a resubmitted WEC filing once the Agency and operator have resolved the errors. Further, commenter noted the EPA has proposed up to 75 days for operators to respond to notifications that their filing contains a substantive error. They suggested this window be shortened significantly.

Commenter expressed under an alternative approach in which the EPA and the operator discuss substantive errors in a separate forum, especially where the EPA's verification helps point to the error, the back and forth between the EPA and operators should be much quicker. Finally, commenter suggested the EPA create a mechanism to incentivize timely responses so that operators don't wait months to respond to the Agency's inquiries. Commenter requested the EPA consider folding this into the Agency's current penalty framework and clarifying that the penalties apply to absent or untimely responses. Alternatively, commenter suggested the EPA establish where an operator's WEC filing is found to contain serious errors, they are automatically audited in future years.

Response 1: The EPA is finalizing as proposed to implement a similar verification procedure under part 99 to that which exists under part 98. This verification procedure is discussed in section III.A.4. of the preamble to the final rule. Additionally, a 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 the preamble to the final rule.

The EPA finalized this rulemaking taking into consideration commenters' suggestions. Pursuant to 40 CFR 99.5 each WEC obligated party must submit their WEC filing including the information specified in 40 CFR 99.7 and remit applicable WEC obligation (including fee) no later than August 31 of the year following the reporting year. All filing revisions must be received according to the schedule in 40 CFR 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.

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 40 CFR 99.4 and any other credible evidence, in conjunction with a comprehensive review of the WEC filing, including attachments. The EPA anticipates completing WEC filing reviews within 60 days which will allow WEC obligated parties time to respond to inquiries from the Agency. The EPA intends to conduct audits of select WEC obligated parties and associated WEC applicable facilities. Regarding the recommendation that the EPA require automatic audits in future years where a WEC filing is found to contain serious errors the EPA has not included this as a requirement in the final rule. As part of the general verification process addressed in 40 CFR 99.7(c) and discussed in section III.A.4. of the preamble to the final rule, the EPA intends to conduct audits of select WEC obligated parties and associated WEC applicable facilities. While the EPA has not finalized a requirement for automatic audits where a prior year WEC filing was found to contain serious errors, the EPA does believe that consideration of prior reporting is relevant in assessing the accuracy of submitted reports. As part of the EPA's current verification procedure for data submitted under part 98, data reported in prior years is reviewed and compared to data submitted for the current reporting year. The EPA anticipates implementing a similar review as part of the part 99 verification process. With respect to third-party audits pursuant to 40 CFR 99.8(c), refer to section III.B.2. of the preamble to the final rule for discussion of the process for assessing WEC for unverified WEC filings. Information pertaining to audits is discussed in more detail under section 11 of this RTC document. The EPA addresses commenters' concerns with regard to penalties in section 8 of this RTC document.

Regarding recommendations that a notation is provided on WEC filings in resubmissions and that substantive errors are addressed in a separate forum, the EPA disagrees that these recommendations are necessary at this time for the implementation of this final rule. The EPA anticipates initial submission, resubmissions, and correspondence regarding WEC filings to happen through an electronic system similar to the existing e-GGRT system used by the GHGRP. The EPA believes a similar system will be suitable for implementation of the WEC and provides advantages of consistency and familiarity for reporters and the Agency.

Comment 2: Commenters (0153, 0155, 0157, 0160, 0161, 0174, 0181, 0218, 0536, 0936) suggested strong verification protocols so that fee obligations accurately reflect reported emissions and that exemptions are only available once the conditions Congress set forth are met.

Commenters (0181, 0936) expressed the need for transparent calculations and methodologies to accurately determine an owner or operator's net emissions.

Commenter 0167 supported the EPA's procedural commitment under subpart W to verify that all reports and information in WEC applications are legitimate and accurately reflect emissions output. Commenter stated this crucial feature must be the cornerstone for all WEC exemption considerations. The commenter stated that all WEC and, in turn, MERP goals hinge on the EPA's pledge under subpart W.

Response 2: The EPA agrees with commenters that strong verification protocols and transparent calculations and methodologies are necessary components of this final rule. See section III.A.4. of the preamble to the final rule for discussion of the final requirements related to verification and WEC filing revisions including response to this comment. For further discussion of the final calculations and methodologies for determining net emissions under this final rule, refer to section II.C. of the preamble.

Comment 3: Commenter 0292 urged the EPA to mandate detailed reporting from regulated entities and to enforce strict verification procedures, especially for entities seeking exemptions. Commenter commended the requirement for entities receiving the permitting delay exemption to provide detailed information on each well pad or offshore platform, including the impact on methane emissions mitigation activities. For those receiving the regulatory compliance exemption, commenter supported the requirement for reporting and recordkeeping of all associated data elements necessary for exemption eligibility verification.

Response 3: The EPA acknowledges the commenter’s support for detailed reporting requirements and strict verification procedures for entities seeking exemptions for permitting delays and regulatory compliance. After careful consideration of all comments received, the EPA has made some changes from proposal to the final rule to further clarify these exemptions. See preamble sections II.D.1. and II.D.2. for more information, including recordkeeping and reporting requirements associated with these exemptions. In addition, see preamble section III.A.4. for further discussion of verification procedures.

Comment 4: Commenter 0327 suggested the EPA create one verification process. They communicated the EPA’s verification process appears to create a separate process for parts of the WEC filing that rely on subpart W reports, and a separate process for those that don’t. Commenter recommended that the EPA create one part 99 WEC filing verification process where there is overlap between subpart W reports and WEC filings; the EPA will need to verify the underlying subpart W information and ensure information in the WEC filing aligns with it. The commenter stated that clarifying that there is one part 99 WEC filing verification process will help avoid confusion.

Response 4: The EPA does not agree that the WEC verification would include a separate process for parts of the WEC filing that rely on subpart W reports and a separate process for those that don’t. The EPA proposed and is finalizing 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, the EPA will conduct an initial centralized review of the data that would help assure the completeness and accuracy of data. Second, the EPA will notify WEC obligated parties of potential errors, discrepancies, or make inquiries as needed concerning the WEC filing. Specifically for this rulemaking, the EPA anticipates 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 the 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.A.4. of the preamble to the final rule.

Comment 5: Commenter 0905communicated the EPA must redefine what constitutes a substantive error during validation of submitted subpart W reports, which are the basis for the WEC. They stated as the EPA explained in the preamble, while there is an annual March 31 deadline for submitting subpart W reports, that "deadline" marks the beginning of a validation process that allows for subpart W reports to be updated well after initial submission (in some cases, years after). Commenter stated this validation process occurs within the e-GGRT platform whereby the EPA sends operators questions. Commenter claimed that this validation process is not typical under any other the EPA emission reporting program. Operators can respond via a text-based response and/or resubmit their emissions report. The commenter asserted that many times, these queries can be closed without further action or only necessitate an administrative update where no change in reported emissions occurs to fully close the query. Commenter stated when an operator response does result in a change of total reported emissions these changes are often de minimis or immaterial to the overall reported emissions. They asserted the EPA must consider the impact of the Agency's inquiries during the validation process given that subpart W is now the basis for calculating the WEC fee.

Commenter conveyed that at a minimum; the EPA should limit inquiries after WEC payments are received to those that result in a true substantive change of reported emissions under part 98. Commenter suggested 5 percent of a facility's total emissions as substantive in comments submitted on the EPA's proposed subpart W, which were incorporated as Attachment B (Previous Industry Trade Comments on Proposed Subpart W Revisions, Docket No. EPA-HQ-OAR-2023-0234) to this comment letter. Commenter indicated this would reduce the administrative burden for both the EPA and operators by focusing queries on topics that are most important to emissions quantified. Consistent with our comments pursuant to proposed subpart W IBR, this still provides time for the EPA to validate emissions but cease the seemingly unending questioning that continue to arise on subpart W reports years after they have been originally submitted under part 98.

Response 5: The EPA is finalizing revisions from the proposal for the WEC filing deadline. The final filing deadline is August 31, five months later than the proposed deadline of March 31. Because the final WEC filing deadline is five months after the subpart W reporting deadline, the EPA expects that commenters concerns related to revisions to subpart W reports will be addressed prior to the WEC filing. While the EPA expects that the final reporting deadlines will

address these concerns, the EPA disagrees with the commenter's suggestions that the EPA must redefine what constitutes a substantive error and to establish a threshold for the percent change in subpart W emissions from a subpart W resubmission that would trigger a WEC refiling. First, there are multiple factors in addition to facility methane emissions that determine the amount by which a facility is below or above its waste emissions threshold (*e.g.*, natural gas throughput), and it would therefore be inappropriate to establish any threshold based on facility emissions alone. More broadly, Congress directs the EPA to collect a waste emissions charge based on emissions and throughput data reported under subpart W. In CAA section 136(h), Congress directs the EPA to ensure that subpart W data "are based on empirical data", "accurately reflect the total methane emissions and waste emissions from the applicable facilities, and 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." The EPA contends that this statutory language indicates the intent for the waste emissions charge to be based on accurate data as reported under subpart W and does not provide the EPA with flexibility to impose a charge based on data that is known by the EPA and the WEC obligated party to be inaccurate.

7.4.1 Proposed November 1 deadline

Comment 1: Commenters (0180, 0221) stated the proposed deadline of November 1 for final revisions seems reasonable.

Commenter 0267 suggested errors in the calculations be allowed to be corrected until November 1 of each calendar year for the previous calendar year's emissions. Commenter indicated that correcting errors for acquired facilities should not be the responsibility of a subsequent owner and should not result in enforcement action or penalty for the subsequent owner or operator.

Response 1: The EPA requested comment on the November 1 deadline for final revisions to the WEC filing 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, and options for alternative deadlines. The EPA also requested 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. (89 FR 5351). Additional discussions on the November 1 deadline are addressed in sections 7.2 response 1 and 7.3 response 1 of this response to comment document.

The EPA acknowledges commenters support for establishing a final resubmission deadline. In this final action, the EPA has established a resubmission deadline of December 15 of each year as specified under 40 CFR 99.7(e) See preamble section III.A. for a discussion of the revised schedule. As discussed further in the preamble, this deadline applies even if the corresponding W data is resubmitted for a historical reporting year for the purposes of subpart W. The EPA addresses comments related to errors pertaining to acquired facilities in section 3.1.3 of this

RTC. The EPA addresses commenters' concerns with regard to penalties in section 8 of this RTC document.

7.4.2 Alternative approaches for data resubmissions for historic reporting years

Comment 1: Two commenters suggested the EPA require a three-year time limit for the WEC program.

Commenter 0283 suggested the EPA's Proposal include a time limit on the Agency's ability to revise its determination of a party's WEC obligations consistent with existing reporting practices and the time limits set on the Agency's ability to obtain authorizations for Information Collection Requests pursuant to the Paperwork Reduction Act. Commenter stated for greater administrative certainty, the EPA should clarify that the Agency's ability to request revisions to WEC obligations is time-bound. Commenter requested that the EPA amend proposed section 99.7(e)(2)(ii) to impose a three-year limitation on the Agency's ability to request revisions, starting from the final resubmission date for the submission in question (currently proposed as November 1 of the given reporting year). Commenter indicated this will establish greater certainty and finality in the process and is consistent with the Paperwork Reduction Act's three-year time limit on the ability of the Office of Management and Budget to authorize an Information Collection Request from the EPA and other Federal agencies (see 44 U.S.C. section 3507(g)). Commenter noted for the EPA not to set any time limit on the Agency's ability to revise its determination of a party's WEC charges stands in tension with Congress's decision to time-limit the EPA's or any other agency's ability to keep in force an information collection request without re-authorization, and hangs a sword of Damocles over industry in the form of a never-ending exposure to potential revisions and demands for additional payment by the EPA. Commenter noted this would not be a reasonable implementation of the WEC statute.

Commenter 0905 suggested the EPA establish a consistent requirement that relevant records under subpart W and the WEC program must be retained only for three years following a given reporting year. Commenter stated to provide needed repose for owners/operators, that three-year deadline also should mark the end of the EPA's and the owner/operator's opportunity or obligation to file amended reports and to amend any required WEC payments.

Response 1: As discussed previously in this section, the EPA has finalized an August 31 deadline for the submission of the WEC filing, along with a December 15 final resubmission deadline. The EPA anticipates that this revised deadline, along with the structure of the WEC assessment provisions, will incentivize timely and accurate reporting such that the need for revised submittals in subsequent reporting years is minimized. Refer to section 10 of this response to comment document and section III.D. of the final preamble for further discussion of the finalized recordkeeping provisions in this rule. As described under 40 CFR 99.7(e), the EPA reserves the right to revise WEC obligations for a given reporting year after the December 15 final resubmission deadline for that WEC reporting year if data errors are discovered by the EPA at a later date. Regarding the comment that the EPA's ability to request such revisions to WEC obligations should be time-bound the EPA provided specified deadlines under 40 CFR 99.7(e) which include the December 15 final resubmission deadline with the exception of revisions for

substantive errors. Refer to section III.B. of the final preamble for further discussion of revisions associated with substantive errors. ,.

8 Remittance and Assessment of WEC

Comment 1: Commenter 0830 disagreed with capping the WEC assessment at $1500 per ton and stated that there is no evidence that the social cost of carbon will plateau within a few years. As such, it should be adjusted annually.

Response 1: The EPA notes to the commenter that the rates per ton are statutorily set in CAA section 136(e) starting at $900 per ton for emissions in 2024, $1,200 per ton for emissions in 2025, and $1,500 per ton for emissions reported in 2026 and each year thereafter. The EPA does not have the authority to adjust the rates set in the statute; therefore, the EPA has not finalized the changes suggested by the commenter.

Comment 2: Commenter 0214 asked that given that the Greenhouse Gas Reporting Program is based on estimates, and that WEC is already charging a high sum, the EPA consider a more reasonable approach to assessing penalties for companies that misreport their emissions and pay an improper amount of WEC and instead encourages accurate reporting and payment, but not punitive. Commenter 0287 stated the fee payment provisions should be simplified and streamline to avoid unnecessary corrections and to create certainty.

Response 2: The EPA acknowledges the commenter's concerns. After review of the comments received, the EPA made adjustments to the WEC filing schedule from proposal in order to minimize corrections related to payment of WEC obligations. Specifically, the EPA revised the deadline from March 31 to August 31 for submittal of the WEC filing and payment of the WEC obligation. The EPA is finalizing a requirement that revisions to the August 31 WEC filing, 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, will be allowed through December 15 of each year. It is expected that with the finalized WEC filing date of August 31, there will be fewer resubmissions of WEC filings due to revised subpart W data compared to the proposed WEC filing deadline of March 31. Additionally, the EPA is not finalizing the proposed approach to charge interest on WEC amounts dating back to the original filing deadline of August 31 but instead is finalizing provisions that would charge interest only on invoiced WEC amounts that are not paid within 30 days (or the invoiced due date). For rationale behind the EPA's decision on the fees and schedule, the EPA refers the commenter to section III.A.2. of the preamble to the final rule.

Comment 3: Commenters (0189, 0282) recommended that the EPA consider revising the WEC remittance due date. Commenter 0189 suggested the fee be remitted when the following year's report is submitting, allowing operators to revise reports without unnecessarily exchanging funds because payment was remitted the same day the report was submitted. Commenter 0282 recommended the remittance date be revised to August 31 of each year, allowing for time after the subpart 98 submittal to be reviewed, emissions to be determined and the appropriate

associated charge to be assessed. Commenter 0282 also recommended facilities be allowed the option to pay in installments so as to spread out the financial impact over a few month period.

Response 3: The EPA acknowledges the commenters' concerns. After review of the comments received, the EPA made adjustments to the WEC filing schedule from proposal in order to minimize corrections related to payment of WEC obligations. Specifically, we have revised the deadline from March 31 to August 31 for submittal of the WEC filing and payment of the WEC obligation. As noted by the commenters, adjusting the deadline from March 31 to August 31 will allow time for the 40 CFR 98.230 (GHGRP Subpart W-Petroleum and Natural Gas Systems) submittal to be reviewed and be verified. As such, we concur that this final approach will reduce the potential for error in the WEC filing and WEC obligation submittals and reduce unnecessary exchange of funds like interest payments or refunds. We anticipate the result will be a reduction in the overall administrative burden to both the Agency and to the WEC obligated parties. The EPA disagrees with the comment to allow for the WEC obligation to be paid in installments over a period of a few months. If the WEC obligated party does not pay the full WEC obligation in accordance with 40 CFR 99.5, the WEC obligated party would become subject to the provisions of 40 CFR 99.10. The EPA refers the commenter to section III.A.2. of the preamble to the final rule.

Comment 4: Commenters (0195, 0222, 0226, 0283) noted that Congress did not give the EPA a deadline by which to begin implementing the WEC program and imposing the WEC charge; the statute tells the EPA for which year's emissions it must begin imposing and collecting WEC but does not tell the EPA when it needs to begin doing this. The commenters requested the EPA take its time to ensure it has the appropriate regulatory structure in place prior to imposing and collecting the charge, allowing time for oil and gas operators to implement the internal reporting and accounting mechanisms needed to bill owners correctly and accurately for their individual working interest shares of the WEC charge. Commenter 0288 also suggested the EPA delay the implementation of WEC by at least one year to allow time for companies to create the necessary accounting processes, stating that some wells have over 50 working-interest owners and each working-interest owner will require additional analysis. Commenter 0283 added that unless and until subpart W is finalized to contemplate reporting of well-level emissions, WEC implementation should be delayed. Commenters (0195, 0222, 0226) suggested better alignment with NSPS OOOOb/EG OOOOc and WEC and more time should be given to better understand what is required before WEC is implemented. Commenters stated questions remain regarding applicability of WEC, how to calculate the charge, the cost of compliance and what can be done to reduce WEC obligations.

Response 4: CAA section 136(g) states that "the charge under subsection (c) shall be imposed and collected beginning with respect to emissions reported for calendar year 2024 and for each year thereafter." The EPA does not have the latitude to adjust the timing of the assessment of WEC as established by Congress, or to discharge the statutory obligation to pay the fee for any particular year or set of years. The EPA acknowledges that the statute does not specify the precise year by which a WEC rulemaking must be promulgated, nor even require EPA to conduct a 307(d) rulemaking to implement the WEC. Rather, Congress set out in the statute the specific numerical obligation. . The EPA is nevertheless finalizing a rulemaking to facilitate ease

of reporting and payment under the WEC program, provide the framework for the exemptions and promulgating this rule in time to provide sufficient notice for WEC obligated parties to begin paying the charge in 2025 for emissions in 2024. After review of comments received, the EPA made adjustments to the WEC filing schedule from proposal in order to minimize corrections related to payment of WEC obligations. Specifically, we have revised the deadline from March 31 to August 31 for submittal of the WEC filing and payment of the WEC obligation for the first reporting year. This additional five months to submit the WEC filing, which includes the report and payment of the WEC obligation, provides additional time for WEC obligated parties to establish and implement the internal accounting procedures for such situations where there are complex ownership interest situations. The EPA further expects that because payment of the charge for 2024 emissions is a statutory obligation, prompt availability of pertinent information related to the reporting structure and associated requirements, including information related to exemptions, will ease the process of payment for WEC obligated parties and avoid unnecessary confusion. The final subpart W rule updates to 40 CFR 98.230 (Subpart W-Petroleum and Natural Gas Systems) reporting, while outside the scope of this rulemaking, provided for more granularity for reporting of methane emissions at the well-level for the onshore and gathering and boosting sectors. The EPA notes that under the final part 99 provisions it is up to the WEC obligated party to allocate responsibility for payment of any WEC obligations. We refer the commenters to section III.A.2. of the preamble to the final rule.

Regarding comments specific to alignment with NSPS OOOOb/EG OOOOc, we refer the commenter to responses to comments in section 17.4 of this document.

Comment 5: Commenter 0283 opposed the proposed filing and remittance dates in the proposed rule. They believed the proposal as outlined was unrealistic for the EPA to meet and requested that the WEC filing date in 40 CFR 99.5 be November 1, rather than March 31. They further requested the EPA revise 40 CFR 99.7(e) to change its references to "November 1 of the year following the reporting year" to "March 31 of the year following the year in which the WEC filing was submitted, or after the March 31 deadline if the resubmission is related," etc.

Response 5: The EPA acknowledges the commenter's concerns. After review of the comments received, the EPA made adjustments to the WEC filing schedule from proposal in order to minimize corrections related to payment of WEC obligations. Specifically, we have revised the deadline from March 31 to August 31 for submittal of the WEC filing and payment of the WEC obligation. This final approach will reduce the potential for error in WEC obligation submittals and reduce unnecessary exchange of funds like interest payments or refunds. We anticipate the result will be a reduction in the overall administrative burden to both the Agency and to the WEC obligated parties. We refer the commenters to section III.A.2. of the preamble to the final rule.

Comment 6: Commenter 0239 agreed with the EPA that "[d]ata 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." They stated these issues are only made worse by the EPA's proposal to require different parties to have different responsibilities under

the two proposals when assets are sold. Commenter stated the EPA also introduces the potential for unfair enforcement risk for new owners by simultaneously proposing that the Agency "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" after November 1 of the reporting year but that the EPA "would retain the right to reevaluate WEC obligations in WEC filings after November 1 (*e.g.*, as part of the EPA audit of facility data)."

The commenter stated that the EPA must make clear in the final rule that a WEC obligated party always has an opportunity to respond to revisions from the EPA before incurring any penalty and should introduce a clear limitations period after which the Agency can no longer seek penalties for past filing discrepancies. In addition, the commenter strongly recommended that the EPA include a two-year limitations period, to begin after the initial submission of WEC and subpart W filings, after which the Agency would not be permitted to seek penalties from regulated companies for newly discovered discrepancies in past filings. The commenter stated that such a limitations period would afford the EPA sufficient opportunity to seek penalties based on historic discrepancies while simultaneously providing the oil and natural gas industry with the regulatory certainty that it needs to operate and that to do otherwise would raise due process concerns if the EPA could impose penalties years after the fact when companies can no longer respond.

Response 6: The EPA acknowledges the commenter's concerns. We refer the commenter to the response to comment 1 of section 17.5 of this document and section II.A. of the preamble to the final rule. Regarding establishing a two-year limitations period, we refer the commenter to response 7 of this section and to section II.A.4. of the preamble to the final rule which details the EPA's reasoning behind establishing a December 15 deadline of the calendar year following the respective reporting year, with a few exceptions including an audit, an enforcement investigation, adjustments made to resolve unverified data, and CAA 111(b) or (d) compliance reports that were unavailable by December 15.

Comment 7: Commenter 0298 strongly recommended the EPA suspend financial penalties for resubmissions and late filings for the first five years of the WEC Program implementation to allow companies navigating the new and complex WEC Program to ensure they fully understand, and are able to effectively comply with, all the dimensions of this rule and the related subpart W and NSPS OOOOb/EG OOOOc rulemakings. They suggested this be done through regulatory text, rather than a discretionary enforcement policy which could be subject to change.

Response 7: The EPA disagrees with the commenter's recommendation to codify the requested suspension of financial penalties. However, after review of the comments received, the EPA made adjustments to the WEC filing schedule in order to minimize corrections related to payment of WEC obligations. We refer the commenters to section III.A.2. of the preamble to the final rule. Additionally, the EPA is not finalizing the proposed approach to charge interest on WEC amounts including adjustments from resubmissions dating back to the original filing deadline of August 31 but instead is finalizing provisions that would charge interest only on invoiced WEC amounts that are not paid within 30 days (or the invoiced due date).

Comment 8: Commenter 0298 urged the EPA to clarify in the final rule that the general citizen suit provision, with respect to 42 U.S.C. 7604, for the CAA would not apply to the WEC program. The commenter stated that they were of the understanding that the IRA-amended CAA does not provide for citizens to enforce the WEC Program via lawsuits, and the EPA gives no indication in the Proposed Rule that it would interpret the statutory text this way.

Response 8: This comment is out of scope of this rulemaking.

8.1 Interest for late WEC fee payments

Comment 1: Commenter 0327 supported the inclusion of penalties for late payment and late or inaccurate WEC filings. They offered several points of clarification as follows:

1. For late WEC payments, the EPA should clarify when interest will begin to accrue and how the EPA will determine the principal amount to which those interest assessments will apply. The WEC filing and payment have the same due date of March 31, therefore the EPA will not have information to calculate the amount owed. 31 U.S.C. 3717(b) says interest accrues from the date the EPA mails notice to the operator. Therefore, the EPA should be prepared to issue notices on April 1 if payments are late or should otherwise clarify what constitutes notice. Further, the agency should clarify how and when it will assess this first penalty (*i.e.*, whether it will be collected incrementally).
2. The EPA should clarify whether the EPA charges interest and the 6percent penalty for those submittals that are 90 days or more late.
3. The EPA should clarify its authority to assess a penalty on late WEC filings is found in 42 U.S.C. section 7413(d) which provides the EPA the authority to issue an administrative order assessing a civil administrative penalty up to $25,000 per day of violation.
4. The EPA should reconsider how it will collect the penalty. The EPA proposes that interest would run from April 1st until the final WEC filing has been submitted and verified as accurate by the EPA. The EPA also proposes that payment for an additional obligation, including interest, would be paid along with the resubmitted WEC filing. But if interest runs until the EPA verifies the resubmitted WEC, payment on that interest cannot occur at the same time as submission of the WEC. Thus, after the resubmitted WEC is filed, the EPA should send an invoice to operators for the interest accrued in increments until the WEC is verified.

Response 1: The EPA acknowledges the commenter's support for the inclusion of the penalty provisions for late and inaccurate WEC filings. After review of the comments received, the EPA made adjustments to the WEC filing schedule from proposal in order to minimize corrections related to payment of WEC obligations. Specifically, we have revised the deadline from March 31 to August 31 for submittal of the WEC filing and remittance of the WEC obligation. We refer the commenter to section III.A.2. of the preamble to the final rule for the rationale.

In accordance with 40 CFR 99.5, the WEC filing and the applicable WEC obligation are due by August 31 to be considered timely. Additionally, the EPA is not finalizing the proposed approach

to charge interest on WEC amounts dating back to the original filing deadline of August 31 but instead is finalizing provisions that would charge interest only on invoiced WEC amounts that are not paid within 30 days (or the invoiced due date). A WEC obligated party account is delinquent and potentially subject to interest, fees, and penalties if payment is not received in full by the specified date of any invoice or notice To clarify, debts that are more than 30 days overdue would be subject to the assessment of interest at the Current Value of Funds Rate.

In accordance with 31 U.S.C. 3717(e), agencies must collect an additional penalty charge of not more than six percent (6percent) per year for failure to pay any part of a debt more than 90 days past due (per appropriate invoice and notice), as well as additional charge to cover the cost of processing delinquent claims. The EPA will assess interest, handling, and penalty charges in 30-day increments for late payments and will assess the additional 6 percent penalty with the third demand letter or notice. Therefore, in accordance with 31. U.S.C. 3717(e), the EPA is finalizing 40 CFR 99.10(c) as proposed to include this additional 6 percent non-payment penalty charge for WEC debts that are more than 90 days past due.

In accordance with 42 U.S.C 7413(d)(1), and as provided in the final rule at 40 CFR 99.10(d), a daily administrative penalty may be assessed for failure to submit an annual WEC filing. The administrative penalty shall be assessed each day that the WEC filing is not submitted, up to the values specified in Table 1 of 40 CFR 19.4, as amended. The assessment of this daily administrative penalty begins on the date that the WEC filing is considered past due (*i.e.*, September 1) and continue until such time that the WEC filing is submitted and certified by the WEC obligated party. The EPA will invoice the WEC obligated party after the late filing is made.

Comment 2: Commenters (0180, 0221) commented that if the EPA plans to assess a daily interest rate when a revised WEC filing results in additional WEC fee being owed, then the EPA should grant refunds with daily interest where a revision results in less WEC obligation.

Response 2: The EPA disagrees with the commenters suggestion that EPA should provide refunds with daily interest. The WEC filing, which includes a report and WEC obligation payment, submitted by the WEC obligated party. It is up to the WEC obligated party to assure that the information is complete and accurate. However, if the EPA finds there was an overpayment, a refund will be issued. To minimize corrections related to the payment of WEC obligation needed, and after review of the comments received, the EPA made adjustments to the WEC filing schedule from proposal. Specifically, we have revised the deadline from March 31 to August 31 for submittal of the WEC filing and payment of the WEC obligation. Moreover, we anticipate that facilities have an incentive to assure WEC filings are accurate so as to avoid overpayment of WEC obligations. Additionally, the EPA is not finalizing the proposed approach to charge daily interest on WEC amounts due to revised filings dating back to the original filing deadline but instead is finalizing provisions that would charge interest only on invoiced WEC amounts that are not paid within 30 days (or the invoiced due date). We refer the commenter to section III.A.2. of the preamble to the final rule.

Comment 3: Commenter 0298 agreed with 40 CFR 99.41(c) as drafted and asked that it be retained as proposed.

Response 3: The EPA acknowledges the comment, however we have clarified the final rule to say that the WEC applicable facility must have no self-reported deviations or violations of the monitoring, emissions limits, or work practice standards, or any violations that the EPA or the enforcement authority discovered of the methane emissions requirements. The evaluation as it relates to the Regulatory Compliance Exemption will be done for each calendar quarter rather than the calendar year so an entity may qualify for the regulatory compliance exemption for one or more calendar quarters, but not the others.

Comment 4: Commenters (0267, 0291) opposed daily interest being assessed for corrections made by November 1. Commenter 0291 suggested that interest only apply to corrections after November 1 for the previous reporting year and only if the EPA has completed review 90 days before the WEC due date. Commenter 0291 stated that historically the EPA has requested clarifications on subpart W filings up to three years post initial filing.

Commenter 0905 stated the proposed rule's timeline for fee payment is problematic because it fails to establish materiality considerations for when the EPA completes validation of submitted subpart W reports, which are the basis for the WEC. The commenter suggested as an alternative that WEC payments resulting from any revision during the validation process of WEC filings should not be subject to interest or penalties.

Response 4: The EPA acknowledges the commenters' concerns. After review of the comments received, the EPA made adjustments to the WEC filing schedule from proposal in order to minimize corrections related to payment of WEC obligations. Specifically, the EPA revised the deadline from March 31 to August 31 for submittal of the WEC filing and payment of the WEC obligation. As noted by the commenters, adjusting the deadline from March 31 to August 31 will allow time for the subpart 98 submittal to be reviewed and be verified. As such, the final approach will reduce the potential for error in the WEC filing and WEC obligation submittals and reduce unnecessary exchange of funds like interest payments or refunds. The EPA also extended the final date for corrections to be made from November 1 to December 15. The EPA anticipates the result will be a reduction in the overall administrative burden to both the Agency and to the WEC obligated parties. Additionally, the EPA is not finalizing the proposed approach to charge daily interest on WEC amounts due to revised filings dating back to the original filing deadline but instead is finalizing provisions that would charge interest only on invoiced WEC amounts that are not paid within 30 days (or the invoiced due date). The EPA refers the commenter to response 7 in section 8 of this document and to sections III.A.2. and III.A.4. of the preamble to the final rule.

8.2 Daily penalty for unsubmitted WEC filings

Comment 1: Commenters (0180, 0221, 0239, 0298) opposed any daily penalty for WEC obligated parties who fail to submit their annual filing by the deadline or for unverified reports. They commented that this is overly punitive and that while regulators may argue for daily

penalties in some contexts under the CAA for periods during which the continued violation is claimed to result in additional environmental impacts during each successive day, that is not the case for late or unverified filings, which have no impact on the actual methane emissions at a facility. Commenter 0239 asserted that failure to submit an annual filing should be viewed as a one-time violation and therefore should not be subject to daily penalties. Commenter 0298 requested that this provision is not included in the final rule. Commenters (0180, 0221) suggested that since interest, handling and penalty charges will be handled in 30-day increments, the penalty for unsubmitted WEC filings also be handled in 30-day increments.

Response 1: The EPA disagrees with the commenters regarding daily penalties for failure to submit annual filings by the deadline and has finalized the rule as proposed to include the assessment of 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 imposition of daily penalties is established in 42 U.S.C 7413(d)(1), therefore the EPA does not have the flexibility to adjust penalties to be imposed in 30-day increments. However, after review of the comments received, the EPA made adjustments to the WEC filing schedule in order to minimize corrections related to payment of WEC obligations. Specifically, we have revised the deadline from March 31 to August 31 for submittal of the WEC filing and payment of the WEC obligation. As noted, adjusting the deadline from March 31 to August 31 will allow time for the subpart 98 submittal to be reviewed and be verified. We refer the commenters to section III.A.2. of the preamble to the final rule.

Comment 2: Commenter 0239 urged the EPA to revise the penalty and interest provisions such that no interest or penalties would be applied for any revisions to WEC filings made prior to November 1 of the filing year. The commenter noted that revisions to filings may be common, even for those who are doing their best to comply, because of the complexity in gathering, verifying, and submitting information to the EPA.

Related, Commenter 0287 suggested the penalty provisions for nonsubmittal, or late payment be considered a violation warranting a penalty only if there appears to be an intentional pattern of willful disregard for the filing requirements or the company has understated their methane fee obligation. The commenter provided some examples of situations where they believe as currently proposed could be viewed as violations, but they believe should not be considered violations and therefore no penalty should be assessed:

- Company reports in a way that overstates their fee owed and pays a higher amount than needed;
- Company pays correct amount, but has no written agreement with all other owners/operators;
- Company reports incorrect subsidiary name, but pays correct fee amount.

Response 2: The EPA acknowledges the commenters' concerns and will take them under consideration during implementation and enforcement of the rule. The EPA cannot anticipate all scenarios which could be perceived as a violation, therefore, we are not codifying the suggestions into the final rule. After review of the comments received, the EPA made adjustments to the WEC filing schedule from proposal in order to minimize corrections related to

payment of WEC obligations. Specifically, we have revised the deadline from March 31 to August 31 for submittal of the WEC filing and payment of the WEC obligation. As noted by the commenters, adjusting the deadline from March 31 to August 31 will allow time for the subpart 98 submittal to be reviewed and be verified. As such, the final approach will reduce the potential for error in the WEC filing and WEC obligation submittals and reduce unnecessary exchange of funds like interest payments or refunds. Additionally, the EPA is not finalizing the proposed approach to charge interest on WEC amounts stemming from revisions dating back to the original filing deadline of but instead is finalizing provisions that would charge interest only on invoiced WEC amounts (including additional charges due to revisions) that are not paid within 30 days (or the invoiced due date). We anticipate the result will be a reduction in the overall administrative burden to both the Agency and to the WEC obligated parties. The EPA refers the commenter to section III.A.2. of the preamble to the final rule.

8.3 Process for Reassessing Resubmittals After the Initial Waste Emission Charge Has Been Assessed

Comment 1: Commenters (0180, 0221) suggested that WEC Obligated Parties be allowed to submit revised data, even for historic reporting years. The commenters understood that the administrative burden on the EPA would increase but given that citizens are allowed to amend tax returns for previous years when errors are discovered, in order to be fair to WEC Obligated Parties, the EPA should allow the same.

Response 1: After review of the comments received, the EPA made adjustments to the WEC filing schedule from proposal in order to minimize corrections related to payment of WEC obligations. Specifically, we have revised the deadline from March 31 to August 31 for submittal of the WEC filing and payment of the WEC obligation. The EPA anticipates with the revised WEC filing deadline of August 31, the majority of substantive errors in underlying subpart W reporting would be resolved in the WEC filing. Moreover, we believe with the incentive for accurate reporting under the rule to assure proper assessment and payment of the WEC obligation would encourage resolution by the December 15 deadline. The EPA acknowledges that under subpart W the resubmittal of reports in subsequent years is allowed but we do not believe this is warranted under the WEC rule given the significant complexity and burden it would impose upon WEC obligated parties, particularly in consideration of the potential impacts upon netting.

Comment 2: Commenters (0267, 0291) stated that if the EPA has a 45-day resolution period for industry to correct discrepancies, the EPA should match with a similar commitment for completing reviews and processing refunds.

Response 2: The EPA acknowledges the comment. Whereas a WEC obligated party is filing on behalf of their operations, the EPA is reviewing the filings from hundreds of WEC obligated parties. As such, for cases where a WEC filing is unverified we have proposed and finalized a reasonable deadline of 60 days from the date the WEC filing is determined to be unverified in 40 CFR 99.8(b) for the EPA to recalculate the WEC obligation using available information, if able, and provide an invoice or refund to the WEC obligated party.

9 Designated Representative

Comment 1: Commenter 0327 recommended that the EPA specify eligibility to serve as a designated representative to ensure company leaders, not outside contractors, are responsible for the accuracy of filings and specifically recommended that the WEC designated representative be required to be an executive-level or senior leader.

Response 1: The EPA has finalized as proposed the substantive requirements related to the selection and responsibility of designated representatives. The designated representative provisions under part 99 are modeled after those in part 98. The EPA anticipates that in many cases the same individual will serve as the designated representative under part 98 and part 99 for a WEC applicable facility and the WEC obligated party. The EPA believes that establishing similar requirements across both rules will facilitate consistency and accountability for implementation of part 99. Note that 40 CFR 99.4(c) establishes the representations, actions, inactions, or submissions of the designated representative as legally binding upon the WEC obligated party.

This provision provides flexibility to the owners and operators to choose any individual, employee or non-employee, to represent them, while ensuring the EPA has one accountable point of contact. The designated representative provisions and certification requirements help ensure the standard for high quality data and consistency is met. The EPA does not find for purposes of part 99 implementation a need to require the designated representative to be an executive or senior leader.

Comment 2: Commenter 0267 stated that the EPA should authorize utilization of an alternate designated representative or shorten the period between identification of a designated representative and the first submission of a WEC filing. The commenter stated that it is possible that an employee serving as a designated representative could leave their position at a company before the end of the 60-day time period in the proposed rule in which a complete certificate of representation is required prior to the submission of the first WEC filing by the WEC obligated party.

Response 2: The EPA has finalized as proposed 40 CFR 99.4(d), specifying that a certificate of representation shall be submitted at 60 days before the deadline for submission of the WEC obligated party's WEC filing. In the circumstance that a designated representative leaves a company prior to submission of the first WEC filing, the certificate of representation may be changed pursuant to the requirements of 40 CFR 99.4(g), which has been finalized as proposed. In this situation, an update to the certificate of representation would be required prior to submission of the WEC filing and prior to the date specified in 40 CFR 99.5. Requirements applicable to the selection of an alternate designated representative have been finalized as proposed at 40 CFR 99.4(f).

Comment 3: Commenters (0267, 0291) stated that a designated representative filing should not be required annually. The commenters stated that such filing should only be triggered by changes in the designated representative rather than as a routine annual requirement.

Response 3: The WEC rule requires an authorization of a designated representative (DR) for each WEC obligated party as part of each WEC obligated party's certificate of representation (COR). It also requires the DR for each WEC obligated party to submit its COR each year. The final rule requires the COR to be submitted each year because it includes information that may change each year, such as the facilities for which the WEC obligated party is the owner or operator. This information is essential for implementing the WEC and ensuring accurate reporting at the time of the WEC filing. If there is no change in the DR year-over-year, the DR information in the annual COR does not need to be updated.

Comment 4: Commenters (0180, 0221) stated that the rule does not require the EPA to establish a designated representative that the WEC Obligated Party can easily contact to receive official answers to questions.

Response 4: The EPA intends to develop tools, documents, and frequently asked questions to assist in understanding and complying with the WEC. Additional information about these resources will be shared with interested parties as they become available. Additionally, the EPA provided three informational webinars on the technical aspects of the proposed rule on January 25, February 20, and March 5, 2024. The EPA intends to provide similar public engagement opportunities related to the final rule requirements.

To the extent that questions relate to requirements under subpart W of the GHGRP, interested parties may contact the GHGRP Help Desk. Additional information may be found at https://www.epa.gov/ghgreporting/help-center-ghg-reporting.

10 General Recordkeeping Requirements

Comment 1: Commenters (0239, 0298) stated that the proposed rule is ambiguous as to whether companies that purchase WEC applicable facilities (and thus would become WEC obligated parties, as of December 31 of the reporting year) would be responsible for retaining records, and all associated obligations, that were generated by the previous owners or operators of those facilities. The commenters stated that the proposal does not address how the five-year record retention provision interacts with the separate provisions for shifting ownership of a facility to which the WEC applies. The commenters stated that the EPA should clarify in the final rule that companies that purchase WEC applicable facilities are not responsible for filings, mistakes within those filings, or penalties or fees associated with such mistakes that were made by previous owners or operators. Rather, the commenters stated that the WEC obligated parties responsible for WEC filings and fees for any reporting year should remain responsible for the accuracy of the payment, the filings, record retention, and responding to any subsequent requests from the EPA regarding the filings for that reporting year.

Response 1: The requirement to retain 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 has been finalized with clarifying revision from proposal. The phrase "you must" has been added to the first sentence of 40 CFR 99.7(d) to more explicitly state the entity to which the recordkeeping requirement applies. For purposes of part 99, "you" is defined as a WEC obligated party subject to part 99. At

proposal, the last sentence of 40 CFR 99.7(d) included this term, so this revision is considered clarifying rather than a change in the requirement from proposal. This requirement applies to the WEC obligated party for all required records for that reporting year, regardless of subsequent changes in ownership for any WEC applicable facilities included in the WEC filing.

The responsibility for revisions to WEC filings following changes in ownership at a WEC applicable facility are addressed at 40 CFR 99.7(e)(6), which has been finalized with clarifying revisions from proposal. In cases where a WEC applicable facility changes ownership such that there is a change to the WEC obligated party, the entity that was the WEC obligated party in the original WEC filing for the reporting year remains responsible for any revisions to WEC filings for that reporting year.

See section II.A. of the preamble to the final rule for discussion of final amendments to subpart A of part 98 affecting reporting responsibilities for subpart W facilities following asset transfers.

Comment 2: Commenter 0289 suggested that the rule align recordkeeping timelines with the GHGRP, and asserted that maintaining records for the WEC separately from the underlying data within the GHGRP is not reasonable. The commenter stated that any maintenance of WEC records that goes beyond the recordkeeping requirements in the GHGRP would essentially mandate maintenance of the underlying GHGRP data or risk rendering the recordkeeping of the WEC obligation data meaningless.

Response 2: The five-year recordkeeping requirement for maintaining WEC records is reasonable and aligns with the 28 USC 2462 timeline for commencing enforcement actions for civil penalties. Because Congress did not establish a specific timeline for enforcement actions concerning violations of the WEC requirements and regulations, the five-year timeline in 28 USC 2462 for commencing enforcement actions applies. The requirement to maintain records for five years supports the enforcement of WEC requirement violations for the full timeline provided in 28 USC 2462. Limiting the recordkeeping requirement to three years reduces the EPA's ability to investigate violations and secure WEC compliance through enforcement. That the WEC recordkeeping requirement may require that certain GHGRP data be retained longer than required by the GHGRP does not render the five year timeline unreasonable.

11 General Provisions (Auditing, Compliance and Enforcement)

Comment 1: Commenter 0212 stated that the EPA has not clarified that they will not use the authorities in what they asserted to be the harassing fashion that has been the history of its actions related to the American oil and natural gas production industry. They commented that the general auditing provisions could allow auditing and enforcement actions to adversely affect the industry. They requested that the EPA determine how it will use the enforcement tools and make those policies public.

Response 1: In the final rule, the EPA developed additional processes to verify data reported under the rule. The Agency notes that the EPA addressed additional verification of the WEC

filing, including any potential use of third-party verification, in the final rule to ensure accurate reporting if the EPA is unable to calculate the WEC obligation. In response to this comment, the EPA has clarified the third-party auditor requirements and auditing authorities in the final rule.

Comment 2: Commenters (0189, 0197, 0209, 0222, 0226, 0288, 0235) stated that small producers who are below the WEC reporting threshold and do not pay WEC obligation should be exempt from audits and enforcement actions related to the WEC.

Commenters (0209, 0235) requested that the EPA states clearly in the final rule that producers generating less than 25,000 metric tons of CO_2e do not have to submit any kind of report to the EPA or to the state-equivalent of the EPA proving that they do not meet that threshold.

Commenter 0288 expressed concern over the potential for being targeted by the EPA for an audit or enforcement due to having taken actions such that CO_2e emissions have fallen below the 25,000 mt/year for the last five years. The commenter added that the time and cost associated with managing data preparing for an audit was a burden Congress did not intend on small producers. The commenter requested the regulation provide clear language that marginal wells and those currently under the 25,000 mt threshold be sheltered from all reporting requirements, potential audits, and the need to maintain ongoing proof of exemption from Greenhouse Gas Reporting.

Response 2: The EPA acknowledges the commenter's concern. The requirement to report greenhouse gases pursuant to 40 CFR part 98 is a separate requirement from this current rulemaking for WEC and those part 98 provisions are outside the scope of this final rule. To respond to this comment, without reopening those part 98 provisions, the EPA notes that for entities that are not subject to 40 CFR part 98 reporting for a given reporting year, the commenter is correct that the entity would not be subject to the WEC for that reporting year. As defined at 40 CFR 99.4 in this final rule, a WEC applicable facility is an applicable facility for which the owner(s) or operator(s) of the part 98 reporting facility was (were) required to report GHG emissions under part 98, subpart W of more than 25,000 metric tons CO_2e for the reporting year. The EPA does not find it necessary to include, as suggested by the commenter, additional language within this final rule related to facilities under the 25,000 metric ton per year threshold.

11.1 Auditing Provisions

Comment 1: Commenters (0267, 0291) stated that EPA has all the information it needs and has the right to request additional information where needed. The commenters contended that third-party audits are unnecessary and burdensome to industry. Commenter 0267 asserted that third-party audits would result in the EPA outsourcing its review.

Response 1: As discussed in the preamble to the proposed rule, the EPA intends 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, the EPA plans 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. In cases where WEC applicable facilities or WEC obligated parties do not provide appropriate information to resolve the errors in their part 99 data, the EPA will consider the WEC filing to be unverified and may require the WEC obligated party to undergo a third-party audit. See section III.B.2. of the preamble to the final rule for additional discussion regarding the final requirements related to unverified WEC filings. Comments regarding the burden of third-party audits to industry are addressed in section 11.1, response 2 of this document.**Comment 2:** Commenters (0180, 0221, 0239, 0276) stated that the EPA should not require the operator to pay for a third-party audit of the WEC and that the EPA should conduct the audit and/or pay for the auditors. Several commenters (0239, 0298) stated that the proposed approach raises anti-augmentation concerns.

Commenter 0283 commented that the EPA's ability to request a reporter-paid third-party audit if the EPA is unable to calculate the WEC with available information is overreaching. They also requested that if the EPA is unwilling to reconsider its position and allocate appropriate resources to in-house audit capabilities that the EPA provide that the WEC obligated party receive a reimbursement for any third-party audits that fail to reveal any substantive errors or underpayments in the reports submitted by the WEC obligated party. Commenter 0298 commented their concerns as to the EPA's proposal that companies may be forced to arrange for and fund third-party audits of their WEC filings. They stated that not only does this provision differ from subpart W, which does not similarly require regulated companies to pay for the EPA-mandated audits, but also asserted that there is no support in the text of the IRA-amended CAA itself. In the event that the EPA does not remove this provision, at a minimum the commenter recommended that the EPA elaborate on the criteria that would be considered in determining when and whether a company must arrange and pay for third-party audits as the current criteria are very broad and generic.

Response 2: The EPA is finalizing revisions from the proposal related to responsibility for payment of WEC-related audits, and refers commenters to section III.B.2. of the preamble for the agency’s full discussion of these requirements. The final rule does not require WEC obligated parties to pay for audits conducted under 40 CFR 99.7(c). These provisions, which are similar to those in the Greenhouse Gas Reporting Program, give the EPA general authority to audit WEC filings. The EPA agrees with commenters that WEC obligated parties should not be responsible for paying for audits conducted under 40 CFR 99.7(c). The final rule also includes third-party auditing provisions under 40 CFR 99.8(c) as a means to resolve any unverified data that is necessary for calculation of the WEC. The EPA disagrees with commenters that WEC obligated parties should not be responsible for paying for third-party auditing conducted under 40 CFR 99.8(c), and disagrees that the third-party auditing provisions raise anti-augmentation concerns.

First, CAA section 136 places the obligation to measure and report WEC calculations and supporting data to the EPA on the owner/operator of the applicable facility, not on the EPA. The EPA would not ordinarily bear the cost of gathering the necessary information to determine the WEC obligation, so it is not augmenting its appropriation by having the WEC-obligated party

pay for a third-party audit of that necessary information. The EPA's responsibility is to calculate the amount of the WEC obligation based on the report from the owner/operator of the applicable facility, a separate function from that performed by the third-party auditor. The third-party auditors are providing a service to the public, not acting as the EPA's agent in performing a governmental function for which the EPA would otherwise have to expend appropriated funds.

Further, the third-party auditor is not a government contractor, does not need approval to operate as an auditor directly from the EPA, and has only to meet certain regulatory qualifications. The WEC-obligated party has full choice in selecting their auditor as long as they meet the regulatory qualifications.

Moreover, the WEC obligated party has a window of opportunity to correct or justify substantive errors in the reports before a third-party audit is required. These auditing provisions will only be triggered if data necessary to calculate the WEC remains unverified after a months-long process. The majority of the data used to calculate charges comes from subpart W. The final WEC rule establishes a WEC filing deadline of August 31, five months after the subpart W filing (and proposed WEC deadline) of March 31. The EPA believes that these five months provide WEC obligated parties and their associated WEC applicable facilities adequate time to make corrections to their subpart W reports and resolve any verification flags that arise from the subpart W verification process. After the initial WEC filing, the EPA will conduct a verification of the WEC filing and provide WEC obligated parties with 30 days to respond to any unverified data identified by the EPA. This includes any subpart W data that remains unverified. Throughout the verification process, the EPA will engage with WEC obligated parties to attempt to resolve the substantive error. Third-party auditing will only be triggered if data remains unverified after these processes. Given that WEC obligated parties will have had ample time and opportunity to address unverified data by the time third-party auditing is triggered, the EPA believes that it is reasonable to require those WEC obligated parties to pay for that auditing. Finally, the EPA disagrees with commenters that the criteria that could trigger third-party auditing under 40 CFR 99.8(c) are too broad or generic. There are many different individual data elements necessary for calculation of the WEC that could remain unverified. For example, methane emissions from any subpart W source category across one or multiple WEC applicable facilities, which could span multiple industry segments, can affect a WEC obligated party's WEC obligation. It would not be practical to list out every one of these single data elements. Therefore, the final rule's criteria that any unverified data necessary for calculation of the WEC can trigger third-party auditing is both necessary and reasonable.

Comment 3: Commenter 0239 stated that as proposed, the description of auditor qualifications and discussion of how the audit information will be used by the Agency is also arbitrarily vague. The commenter stated that the EPA WEC proposal have not established clear auditor qualifications. The commenter stated that this makes it impossible for them to accurately assess the availability of potential auditors and potential costs associated with these audits.

Commenter 0278 commented that in proposed section 99.8, the EPA references a "certified" independent third-party auditor, but does not provide any clarity as to what "certified" means. They requested "certified" be removed from the proposed rule and maintain the requirement than

an auditor has professional work experience in the petroleum engineering field or related to oil and gas production gathering processing transmission or storage.

Commenter 0271 requested that the EPA provide additional clarification in the final rule regarding the certification of third-party reviewers. Specifically, the commenter requested clarification of the following:

- What certification is the EPA referring to?
- What is the process for certification?
- What accreditation body or bodies are qualified to perform a certification of the independent third party?

Response 3: The EPA acknowledges commenters' concerns regarding auditor qualifications and has provided additional clarification and requirements for third-party auditors in the final rule at 40 CFR 99.8(c). See also discussion at section III.E.1. of the preamble to the final rule.The EPA removed the proposed requirement for a certified auditor from 40 CFR 99.8(c)(1)(i) of the final rule and requires the third-party auditor be a qualified professional engineer with professional work experience in the industry, preferably certified by the Society of Petroleum Engineers.

Comment 4: Commenter 0287 stated that the EPA should place reasonable limits on the use of third-party audits. They commented that the proposed rule lacks substantial discussion of the standard for requiring a third-party audit. They recommended that the EPA should include some form of materiality threshold for requiring a third-party audit.

The commenter proposed that any decision to seek a third-party audit should be based on a record that includes an independent the EPA evaluation of the available data as well as the WEC applicable facility's interpretation of the data, including any response to data submitted by outside parties.

Response 4: The final rule establishes a verification process for the WEC filing that places reasonable limits on the use of third-party audits. The process involves reviewing the verification status of part 98 reports along with a comprehensive review of the WEC filing. If the EPA or WEC obligated party determines there are substantive errors to their filing, the EPA allows for report and WEC filing corrections under part 98 and part 99. Since the EPA allows for corrections to the WEC filing prior to requiring a third-party audit, and therefore allows every attempt to facilitate resolution without requiring auditing, additional limits were not established for requiring a third-party audit. The EPA did not include the suggested materiality threshold because in the case of unverified filings, the EPA may not be able to determine the magnitude of methane emissions until after the resolution of the audit.

Comment 5: Commenter 0274 stated that the proposed rule lacks clarity regarding the criteria for determining that a WEC calculation remains unverified and at what point the EPA will engage a third-party auditor. They commented that the EPA should clarify that it will continue to make reasonable attempts to resolve any remaining challenges in verifying the WEC calculation prior to engaging a third party.

Response 5: The EPA has set forth a verification process for the Waste Emissions Charge that is similar to the part 98 verification process and the final part 99 process allows every attempt to facilitate resolution without requiring auditing. The EPA has experience determining and resolving unverified reports under subpart W and will utilize similar methodologies to resolve unverified WEC filings as described in 40 CFR 99.7(c) of the finalized rule. During subpart W verification, most questions regarding unverified reports are resolved but some facilities become non-responsive or fail to substantively provide information in response to questions. The final rule intends to provide the WEC obligated party an opportunity to correct their filing prior to engaging a third-party audit.

Comment 6: Commenter 0434 recommend that the EPA creates auditor programs using people who have experience in the oil and gas industry.

Response 6: The EPA acknowledges the commentors' recommendation that the EPA utilize auditors who have experience in the oil and gas industry. Refer to 40 CFR 99.8(c)(1)(i) and the associated discussion at section III.B.2. of the preamble to the final rule for the finalized requirements for third-party auditors, including that third-party auditors under this rule must have professional work experience in the petroleum engineering field or related to oil and gas production, gathering, processing, transmission, or storage.

Comment 7: Commenter 0219 recommended the introduction of regular inspections by implementing annual third-party audits because studies continue to show that methane emissions are significantly underestimated. They commented that current standards for methane emissions reporting do not provide investors with the assurance of accuracy.

Commenter 0936 stated that companies should use the best available technology to calculate their emissions because the companies are not poor. They requested that this is written into the proposed rule for calculating the facility emissions. They also recommended that the EPA should verify these reported emissions themselves because the reported emissions are generally lower than what is actually occurring in the field.

Response 7: The EPA finalized amendments to subpart W on May 26, 2024, and those amendments are outside the scope of this rulemaking. The EPA notes, without reopening, that the amendments improved methane reporting requirements to ensure that reporting is based on empirical data and provide reporting requirements that accurately reflect total methane emissions from applicable facilities. Every WEC applicable facility undergoes a review and verification process by the EPA to check for substantive errors in their reported data. During verification, the EPA will contact the WEC obligated party with unverified WEC filings to attempt to resolve any substantive errors as detailed in 40 CFR 99.7 of the finalized rule. If the WEC obligated party fails to resolve an unverified WEC filing, the EPA has established auditing requirements to verify the reported emissions, detailed in 40 CFR 99.8(c) of the finalized rule.

11.2 Compliance and Enforcement

Comment 1: Commenter 0163 recommended that the EPA enforce strong verification protocols so that fee obligations accurately reflect reported emissions and that exemptions are only available once the conditions Congress set forth are met.

Commenter 0173 called for the establishment of robust enforcement mechanisms to ensure comprehensive compliance with the WEC program. They also requested transparency in enforcement actions and commented that the promotion of public accountability mechanisms can enhance the program's efficacy.

Commenter 0292 also recommended the EPA ensure public accessibility of data and transparency and conduct thorough data auditing, including cross-agency oversight as appropriate.

Response 1: The EPA acknowledges the commenters' recommendation for strong verification protocols. The EPA agrees that robust enforcement and verification protocols are necessary for WEC implementation, as written in section III.E. of the preamble to the final rule.

Comment 2: Commenter 0287 stated that only significant violations of the WEC rules should be subject to penalties.

Response 2: The EPA disagrees with the comment that only significant violations of the WEC rules should be subject to penalties. However, the Office of Enforcement and Compliance Assurance (OECA) uses a gravity assessment of penalties, which are detailed in Federal Register (65 FR 19618). Comments regarding the loss of the regulatory compliance exemption are addressed in section 5.6.2 of this document.

Comment 3: Commenter 0283 stated that the third-party audit requirement is inappropriate and that the proposed definition of "substantive errors" is overly broad. The commenter stated that accurate calculations of methane emissions and the associated WEC are nearly impossible, even assuming that a WEC obligated party strictly follows all provisions of subpart W because there will never be a perfect degree of certainty. For this reason, they requested that the EPA include in the final rule a provision that prevents the EPA from alleging the existence of a substantive error if the WEC obligated party is in substantial compliance with the reporting requirements of part 98.

Response 3: The EPA disagrees with these comments. The EPA proposed and is finalizing that a substantive error is one that impacts the ability to accurately calculate a WEC obligated party's obligation. Because the entire purpose of the rule is to implement the Waste Emissions Charge, the EPA contends that it is reasonable to find that an error that prevents accurate calculation of the charge to be substantive and in need of resolution. Subpart W data is the primary input into the WEC calculations. The EPA does not agree that a provision should be added to the final rule preventing the EPA from alleging the existence of a substantive error if the WEC obligated party is in substantial compliance with the reporting requirements of part 98. The EPA does not

believe that such an addition is either appropriate or necessary, because if a subpart W facility is complying with the reporting requirements under that rule, the EPA does not expect that facility would have any errors in its subpart W report that would be considered substantive errors under the WEC rule. In other words, if there are no verification flags in a facility's subpart W report, there would be no substantive errors associated with that facility's subpart W data in the WEC filing associated with that facility.

Comment 4: Commenter 0327 recommended that the EPA consider whether the WEC and reporting under the GHGRP, including subpart W, qualify as a National Enforcement and Compliance Initiative (NECI). The commenter stated that this may help to improve and provide resources for the verification process. The commenter asserted that the WEC meets the NECI criteria discussed in a December 20, 2022, policy memorandum.[1]

[1] Lawrence Starfield, EPA, Updated Policy for EPA's Enforcement and Compliance Initiatives, Memorandum (Dec. 20, 2022), https://www.epa.gov/system/files/documents/2022-12/necimemo.pdf.

Response 4: The EPA acknowledges the commenter's recommendation to consider qualifying the Waste Emissions Charge as a National Enforcement and Compliance Initiative (NECI). The EPA gathers and considers input on the proposed NECIs from states, territories, and tribes, as well as from the public, environmental groups, and regulated entities. The EPA also plans to publish the potential NECI options in the Federal Registers for comment and consider the feedback in the selection of the final NECIs.

Comment 5: Commenter 0327 recommended that the EPA coordinate compliance assurances with other offices to verify that subpart W reports and WEC filings reflect accurate emissions counts. They recommended involving the National Association of Clean Air Agencies, state regulatory agencies, and states' attorney general to understand any potential obstacles to effective implementation (including enforcement) from their perspective. They recommended that the EPA also work with the Department of Justice's Environmental Enforcement Section and air agencies in key states to review current reporting requirements. They also recommended that the EPA immediately begin consulting with the Internal Revenue Service, the Bureau of Safety and environmental Enforcement, and the Bureau of Land Management to determine whether there are lessons learned from these agencies' past enforcement actions.

Response 5: The EPA acknowledges the commenter's recommendation to coordinate compliance assurances with other offices. The agency will work with the appropriate offices as necessary to verify subpart W reports and WEC filings.

Comment 6: Commenter 0215 stated that the procedure for determining exemptions from the methane fees under the Proposed Rule is ambiguous and is likely to lead to agency confusion with respect to implementation and enforcement. The commenter encouraged the EPA to clarify how compliance and exemptions will be evaluated.

Response 6: See section II.D. of the preamble to the final rule as well as the requirements in 40 CFR 99.30, 99.40, and 99.50 of the final rule for qualification criteria for each exemption.

12 Confidentiality Determinations

Comment 1: Commenters (0191, 0294, 0656) noted the importance of transparency and accountability in environmental regulation. The commenters supported the establishment of confidentiality determinations for certain data elements included in WEC filings to ensure the EPA can protect proprietary data without compromising the integrity of the regulatory process.

Commenter 0850 stated that the proposal lacked transparency because of the establishment of confidentiality determinations for data elements and this would lead to confusion amongst affected businesses hindering compliance.

Response 1: Regarding the comment that the proposal lacked transparency, the EPA disagrees. Detail was not provided by the commenter regarding how the proposed confidentiality determinations would hinder transparency or raise accountability concerns, so the EPA is unable to respond specifically to these claims.

Comment 2: Commenter 0327 supported the EPA's proposal for determining the confidentiality of data and suggested the EPA explain how it will determine the confidentiality of information gathered during an audit or other information received to verify a WEC filing outside of the normal WEC filing period.

Response 2: The confidentiality determinations in this final rule provide information on how the EPA is applying the requirements of 40 CFR part 2 specifically to data collected as part of the WEC filing, particularly in cases where the specific information collected is not eligible for confidential treatment (*e.g.*, emission data).*e.g.* To the extent information collected in the audit process or additional information provided by the WEC obligated party matches with the type and category of information that has already had a determination made through this rulemaking, the CBI determinations from the rule will apply and no further analysis will be necessary. For any data collected during the process of an audit or additional information provided by the WEC obligated party that does not fall within a type or category of information with an existing determination from the WEC rule, the EPA will follow the requirements of 40 CFR part 2 and determine whether any additional information from the audit is eligible for confidential treatment on a case-by-case basis.

Comment 3: Commenters (0180, 0221) noted that the proposal stated that the methodology used to calculate net WEC emissions was classified as emissions data 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." The commenters stated that the public has no official role, responsibility, or expertise in verifying whether an appropriate methodology was used to calculate emissions but rather the sole authority and responsibility of the EPA.

Response 3: As noted in section IV.A. of the preamble to the proposed rule, CAA section 114(c) establishes a presumption that information submitted to the EPA may be disclosed to the public, provides for a narrow exception for information that may be eligible for confidential treatment, and narrows this exception by excluding emissions data. The preamble to the proposed rule explains that the EPA considers the two data elements in the calculation methodology category – 1) 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 2) the method used to determine the equipment leaks emissions attributable to a plugged well – to be "emission data" under 40 CFR 2.301(a)(2) because they are "information necessary to determine . . . the amount" of emissions emitted by the source. The commenters did not address whether these two data elements should be considered "information necessary to determine . . . the amount" of emissions or emissions data under this provision. Nor did the commenters explain why these data elements should be eligible for confidential treatment. Therefore, the EPA is finalizing this determination as proposed.

12.1 Proposed categories of Emission Data

Comment 1: Commenters (0287, 0905) disagreed with the name and contact information, specifically the name, address, and email of the designated representative of the WEC obligated party should be considered emissions data and available publicly. Commenter 0287 added the signed certification should also be held confidential. The commenter held that such information should be confidential to avoid unwarranted harassment of or invasion of privacy of the designated representative of the WEC obligated party. The commenter supported their position stating that the information is exempted from disclosure under exemption 6 of the Freedom of Information Act (FOIA), which exempts information that, if disclosed, would invade another individual's personal privacy, and exemption 7(c), which exempts information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Response 1: The name and contact information for the designated representative are not being finalized as information to be collected as part of the WEC filing. Therefore, a confidentiality determination for those data elements is not necessary for this rulemaking and any proposed determinations for these elements are also being withdrawn. Regarding the certifier's signature, as a Federal agency, the EPA complies with the provisions of the Privacy Act and has procedures for handling Personally Identifiable Information (PII), including physical signatures.

Comment 2: Commenter 0282 recommended not finalizing a confidentiality determination for the data elements as not eligible for confidential treatment. The commenter noted many gathering and boosting systems process gas for other operators on a contract basis and the volumes being processed through compressor stations and treating plants are highly confidential. The commenter recommended evaluating confidentiality on a case-by-case basis and in general considering operational data as confidential unless good cause is provided to the contrary.

Response 2: The EPA did not propose and is not finalizing a requirement to report information on the volumes being processed through individual gathering and boosting sites, either under the

WEC or subpart W. Therefore, the EPA did not propose and is not finalizing any confidentiality determinations related to such information. The EPA also notes, without reopening the part 98 provisions, that the quantities of gas and hydrocarbon liquids received by and leaving a facility with respect to gathering and boosting are reported under subpart W, and the confidentiality determinations for those data elements were proposed in 2014 and finalized in 2015 (see 79 FR 73148 and 80 FR 64262, respectively).

13 Regulatory Impact Analysis

Comment 1: Commenter 0905 stated that the EPA must consider all relevant factors when making regulatory decisions and did not provide analysis of how regulatory alternatives would affect the scope of applicability of the WEC. Specifically, the commenter asserted that the EPA failed to consider the following in the proposed implementation of CAA section 136:

1. applicability of the WEC program (*e.g.*, how many facilities will exceed the 25,000 tpy emissions threshold);
2. the number of facilities that trigger the obligation to pay a fee;
3. and for those owing a fee, the amount of that fee.

The commenter asserted that the EPA made the unstated assumption that it should maximize applicability of the WEC program and maximize the fees paid under the program rather than design the program to further incentivize emissions reductions. The commenter specifically noted the proposed implementations for netting and the regulatory compliance exemption as provisions that would require owner/operators to pay more fees than Congress intended. The commenter stated that the EPA did not provide analysis for how these examples, as well as other key program elements, would impact the items listed above as well as how these differing impacts would affect overall program implementation. The commenter asserted that the EPA does not consider whether incentives to reduce emissions would be greater or lesser, whether differences in fee payments would be material, and whether the regulatory alternatives promote or detract from the overall program purposes and Congressional intent.

The commenter stated that the EPA is obligated to consider all relevant factors when making regulatory decisions, with citation to *Motor Vehicle Mfrs. Assn. v. State Farm*, 463 U.S. 29 (1983) at 43 ("Normally, an agency rule would be arbitrary and capricious if the agency … entirely failed to consider an important aspect of the problem."). The commenter asserted that the EPA falls short of that obligation by failing to assess the programmatic consequences of the key regulatory alternatives of the proposed rule.

Response 1: The EPA disagrees with the comment's assertion that the proposed rule failed to consider relevant factors when making regulatory decisions, and disagrees with the assertion that the EPA made the unstated assumption that it should maximize applicability of the WEC program and maximize the fees paid under the program rather than design the program to further incentivize emissions reductions.. The EPA's duties and authority for this rulemaking are derived under CAA section 136 of the CAA, and its decisions in this rulemaking are made within the

confines of that authority and justified under the EPA's record-based analysis and analysis of the statutory language of CAA section 136. The analysis in the final RIA prepared under Executive Order 12866 is entirely distinct from the statutory determinations, are not used to justify this action, and are presented solely for the purposes of complying with E.O. 12866. Congress did not authorize the EPA to consider a formal cost-benefits analysis in implementing CAA section 136, and the EPA's decisions were based on the best reading of the statutory directives that Congress did provide. Nevertheless, the EPA believes the results of the analysis in the final RIA prepared under E.O. 12866 of the WEC final rule is reasonable. The EPA estimated policy impacts such as the number of applicable facilities, the number of facilities whose emissions exceed facility waste emissions thresholds, and estimated WEC obligations. However, again, CAA section 136 does not direct the EPA to base its implementation decisions on maximizing or minimizing these factors. The EPA has based its implementation decisions on the best interpretation of the statutory language.

With respect to netting, although the RIA is not the basis for decision-making in this final rule, the final RIA does include sensitivity information comparing two alternative netting scenarios. Section 8.3 compares RIA results under the proposed interpretation of owner-operator netting in comparison to the broader final interpretation of netting among facilities whose owner-operators have the same parent company.

To the extent that the commenters raised specific comment on the contents of the RIA at proposal, these comments are addressed in the respective sections of this response to comment document.

Regarding comment on the proposed and final implementation of CAA section 136(f)(4) with respect to the netting of emissions, refer to section II.B. of the preamble to the final rule and Section 3 of this response to comment document.

Regarding comment on the proposed and final implementation of the regulatory compliance exemption, refer to section II.D.2. of the preamble to the final rule and Section 5 of this response to comment document.

Comment 2: Commenter 0906 acknowledged that the proposed rule does not directly apply to the natural gas distribution section, but stated that natural gas local distribution companies (LDCs) may be directly affected, to the extent that they own or operate natural gas equipment in industry segments that are subject, and indirectly affected, based on the degree to which upstream facilities reduce their methane emissions and how these entities address their costs of complying with the WEC. The commenter stated that as a result, LDCs and their respective associations have a demonstrable interest in the proposed rule.

Response 2: The EPA confirms the commenter's understanding that natural gas local distribution facilities are not directly subject to the requirements of part 99. Regarding the statement that local distribution companies (LDCs) and their respective associates have a demonstrable interest in the proposed rule, the EPA acknowledges that comments received from

LDCs and their respective associations were reviewed and are responded to in this response to comment document.

To the extent that LDCs own operations in other industry segments that are directly subject to the WEC, those impacts were estimated in the proposal RIA. The EPA acknowledges that LDCs may experience indirect impacts cost passthrough or steps taken to reduce upstream emissions, but notes that the estimated market impacts for the proposed rule as presented in Section 5.2.2 of the proposal RIA were relatively small and therefore are not expected to be a significant impact for LDCs.

Comment 3: Commenter 0292 stated that a robust final rule will not unduly burden the industry. The commenter stated that the proposed rule targets a small number of large facilities and a limited volume of emissions. The commenter noted that the EPA estimates that the rule would affect only 12 percent of national methane emissions from petroleum and natural gas systems. The commenter stated that the industry already employs various cost-effective technologies that can help operators avoid the fee and that Congress provided $1.55 billion which will help facilities reduce current emissions by innovating and deploying new technologies. The commenter stated that the proposed Waste Emissions Charge would generate valuable revenue for Federal taxpayers and noted that the EPA estimates that the fee will generate $2.3 billion in revenue between 2024 and 2035.

Response 3: The EPA acknowledges the comment.

13.1 Baseline Projection Approach

Comment 1: Commenters (0224, 0905) stated that the EPA underestimated the impact of the WEC by basing its analysis on reporting year (RY) 2021 subpart W data. The commenters noted that RY2021 occurred during the COVID-19 pandemic and asserted that it most likely does not accurately reflect a typical year for oil and gas operations due to reduced energy demand and artificially reduced production. The commenters stated that RY2021 (or any other year) data does not reflect the proposed subpart W revisions, which will significantly increase the reported methane emissions based on the proposed rule.

Commenter 0905 asserted that by underestimating the impact of the WEC, the EPA also failed to adequately assess impact to small businesses under the Regulatory Flexibility Act.

Response 1: The EPA has updated the baseline to RY2022 subpart W data, reflecting the most recent information available. The small business impact analysis has likewise been updated. Please see chapters 3 and 9, respectively, for more information. Specific comments related to estimated impacts on small businesses are addressed in sections 13.7.1** of this response to comment document.

The EPA acknowledges that the regulatory impact analysis baseline is based on emissions historically reported to subpart W, and therefore does not reflect the recently finalized revisions. Section 8 of the proposed rule's and this final rule's RIA contains a discussion of uncertainty

related to this factor for the regulatory impact analysis, including qualitative factors analysis and a quantitative analysis of a scenario of sensitivity on GHGRP Calculation Methods. As further explained in the RIA, estimating WEC obligations requires estimates of reported emissions for particular facilities, which will be impacted by factors such as reporter choice of calculation method and site-specific measurements. Because this information is not yet available, it is not possible for the EPA to precisely analyze regulatory impacts for this WEC rule's regulatory impact analysis based on revised subpart W emissions reporting under the subpart W final rule. See also response 1 in section 13.6 of this response to comment document.

13.2 WEC Scenario

Comment 1: Commenter 0937 stated that the emissions to which the WEC will apply to amount to only a small fraction of methane emissions from the US oil and gas sector. The commenter provided calculations based upon data from preamble to the proposed rule and the Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2021 to estimate that methane emissions subject to charge will amount to approximately 10 percent of methane emissions from oil and gas facilities. The commenter contrasted this estimate with the statement in the proposed rule preamble that, "WEC would be imposed on less than 15 percent of national methane emissions from petroleum and natural gas systems."

Response 1: The EPA agrees that based on a comparison of estimated oil and gas methane emissions subject to WEC and the overall GHG Inventory, that a relatively small proportion of U.S. national oil and gas methane emissions are subject to WEC, thus the statement that "WEC would be imposed on less than 15 percent of national methane emissions from petroleum and natural gas systems."

For the final RIA, the analysis has been updated to reflect 2022 data. Please see Table 1-1 of the RIA for more information.

13.3 Cost and Emissions Impacts

13.3.1 Methane Mitigation

Comment 1: Commenters (0180, 0221) expressed concern regarding the ability of WEC obligated parties, especially those that are small entities, to acquire equipment to mitigate methane emissions or apply labor resources to such mitigation and WEC reporting. The commenter noted that there have been issues with supply chains being insufficient to provide the equipment necessary to mitigate emissions in a timely manner, that labor shortages in some areas will make mitigation and reporting difficult, and that affected entities may be forced to change their production and operational decisions as a result of the WEC.

The commenters stated that this could result in reduced supplies of oil and gas, which could drive up prices for consumers if demand does not also decrease. The commenter noted that the EPA provided estimates for these impacts in the RIA but stated that they fear these may be underestimated.

Response 1: The Waste Emissions Charge 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 would be avoided by reducing methane emissions. In characterizing estimated methane mitigation, the EPA has used the most up to date available data. In recognition that full implementation of cost-effective methane mitigation takes time, the RIA analysis has assumed a 3-year phase-in of cost-effective mitigation from 2024 to 2026. The EPA acknowledges uncertainty in the cost and implementation speed of mitigation technologies, which would cause impacts to vary.

The EPA conducted a small business analysis that assessed costs to revenue ratios of small entities subject to the WEC. Most small oil and gas producers are not subject to the WEC because many small companies fall below the 25,000 CO2e threshold for WEC applicability. Among small entities that do report to subpart W, the analysis found that a relatively small proportion would experience cost-to-revenue ratios of over 3 percent as a result of the WEC. Please see section 9.1 of the RIA.

Comment 2: Commenter 0327 submitted analyses that they stated build upon the EPA's Regulatory Impact Analysis (RIA) and demonstrate the complementary and reinforcing nature of the Methane Rule (NSPS OOOOb and EG OOOOc) and the proposed rule. The commenter stated that by adopting commonsense and cost-effective mitigation measures, owners and operators can reduce or eliminate their WEC liability while working toward compliance with the Methane Rule.

The commenter provided an updated marginal abatement cost curve analysis. The commenter stated that in the EPA's analysis, the agency may have overestimated the cost of abatement from key sources including leak detection and repair, process controllers, and flaring. The commenter estimated a scenario where the proportion of cost-effective abatement is increased by 20 percent based upon what the commenter asserted was substantial evidence that control costs are lower than the EPA assumes. This resulted in an additional 200 kt of methane that would be abated and a reduction in estimated WEC liability of more than $1.5 billion.

The commenter further stated that the phase-in factors used in the EPA's analysis (33 percent for 2024 and 67 percent for 2025) are likely conservative. The commenter suggested alternative phase-in factors of 40 percent in 2024 and 80 percent in 2025. The commenter stated that these factors are supported by evidence demonstrating the widespread availability of methane abatement technologies. Use of these factors in estimates results in an additional 100 kt of methane that would be reduction in estimated WEC liability of nearly $1.4 billion.

The commenter stated that the combined effect of increasing the percentage of cost-effective abatement and assuming earlier adoption results in an additional 300 kt of abated methane and $1.6 billion in reduced liabilities under the WEC.

The commenter also provided a hypothetical example demonstrating how much operators could reduce their WEC payments by retrofitting emitting process controllers to zero-emitting solutions. The commenter stated that swapping out emitting controllers with zero-emitting controllers can significantly reduce an owner or operator's potential WEC liability while at the same time helping them work toward compliance with the Methane Rule. The commenter provided an analysis based upon subpart W emissions and throughput data for select parent companies that vary in emissions and the portion of their emissions attributable to process controllers. The commenter stated that their analysis found that the four parent companies analyzed could reduce their WEC payments by more than 60 percent (or $63 million) by retrofitting their sites with zero-emitting controllers. Further, the commenter stated that for some companies almost 100 percent of WEC liability can be avoided by 2026 by replacing process controllers with zero-emitting devices and that for other companies with a lower percentage of emissions from process controllers complying with the process controller standards would still allow them to avoid 68 percent of fee liability. The commenter noted that their example did not consider other requirements under the Methane Rule, including the leak detection and repair and flaring standards, and asserted that adoption of which would further significantly reduce or even fully avoid WEC payments.

Response 2: The EPA acknowledges that there is uncertainty in speed and cost of mitigation options. To the extent that mitigation could be performed faster or more inexpensively than the EPA has estimated, emissions reductions could be higher, and control costs or WEC payments could be lower than estimated. Conversely, to the extent that mitigation is implemented more slowly or is more expensive than estimated, then the results could vary in the opposite direction. The EPA updated the RIA marginal abatement cost curve analysis to reflect the most recent information available. Please see chapter 5 and Appendix C of the RIA for more information on available mitigation technologies that were included in the updated WEC analysis. The commenter did not provide information showing that their preferred assumptions would be more accurate than the EPA assumptions, nor showing that the EPA assumptions are unreasonable given the uncertainties, so no change was made to the analysis.

Comment 3: Commenter 0196 stated that supply chain issues will persist as oil and gas companies change their devices over the next 18 months and that increased costs are certain as manufacturers seize the opportunity.

Response 3: The EPA agrees that there is uncertainty in the cost and availability of mitigation technologies and therefore the speed and cost at which mitigation technologies could be implemented. The EPA has used the most accurate and up to date information available regarding the cost and effectiveness of mitigation technology. In order to account for potential barriers to adoption of mitigation technologies, the final rule's RIA has assumed a three-year phase-in of cost-effective mitigation technology. To the extent that cost-effective mitigation technology cannot be implemented as quickly as has been estimated, the emissions reductions would be lower and the WEC payments higher than estimated. Conversely, if mitigation technology is less expensive or can be implemented more quickly than estimated, emissions reductions could be higher and control costs and WEC obligations lower than estimated.

13.3.2 Energy Market Impacts

Comment 1: Commenters (0297, 0300) stated that the proposed rule would result in increased emissions and reduced domestic supply of oil and natural gas. The commenters asserted that curtailment of U.S. production, or in some places shuttered due to the additional costs and requirements caused by the proposed rule, would result in increased imports of oil and natural gas from producing countries with lower environmental and labor standards (*i.e.*, India, China, Russia). The commenter stated that there would be destabilizing national security implications of this shift.

Commenter 0300 urged the EPA to undertake a robust analysis (to be released to the public) to determine if the global harm to any shift in production overseas - as a result of the implementation of the proposed rule and the previously finalized NSPS OOOOb and EG OOOOc - would result in more pollution, not less, and the extent to which the advantages of domestic production and the benefits derived from that production outweigh any negative externalities from pollution by an overseas competitor.

Response 1: The EPA disagrees with the comment's assertion that the proposed rule would lead to significant changes in the domestic supply of oil and natural gas. The EPA analyzed energy markets impacts of the WEC, described in section 5.2 of the RIA. This analysis uses a partial equilibrium economic model that represents domestic oil and gas extraction, domestic demand, and foreign supply and demand for crude oil and natural gas. Changes in imports or exports are estimated through consideration of foreign-domestic substitution for natural gas and oil. This analysis estimated impacts on oil and gas prices and U.S. production of less than 0.1 percent. Specifically, a maximum impact on the gas market of a 0.04 percent price increase and a 0.026 percent decrease in production. The highest impact year was 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 0.03 percent price increase and a 0.026 percent decrease in production. The highest impact year was estimated to be in 2026, with an estimated production decrease of 1.27 million barrels of oil. The minimal impact of the WEC on energy markets indicates the WEC would not have an appreciable impact on foreign imports and exports of oil and gas. Further discussion of this analysis is available in the Regulatory Impact Analysis of the Proposed Waste Emissions Charge, which was made available in the docket for the proposed rulemaking.

Comment 2: Commenters (0221, 0232, 0234) expressed concern regarding the extent to which the proposed rule would impact household utility costs. Commenter 0221 stated that Environmental Justice communities and persons with low to moderate incomes are disproportionately impacted negatively by energy price increases, which raises home heating costs and the cost of transporting all types of goods to market. Commenter 0232 stated that the RIA to the proposed rule does not address or provide sufficient reasoning for why the proposed rule would only result in little to no change in energy costs and expressed concern that oil and gas companies will likely pass on additional costs and charges to their customers. Commenter 0234 expressed concern that the costs associated with the proposed rule will result in natural gas becoming more expensive to produce and less available in the marketplace.

Commenter 0173 stated their support for the proposed rulemaking. The commenter stated that lower emissions is essential for protecting the interests of D.C. ratepayers, promoting environmental justice, and facilitating a sustainable energy future. The commenter stated that because the District lacks direct control over the practices of sourcing, extraction, and transmission of the natural gas it consumes, Federal regulation is an essential tool for ensuring that methane emissions associated with the gas used in D.C. are minimized at their source. The commenter further stated that imposition of a WEC on facilities exceeding methane emissions thresholds serves as a necessary economic disincentive.

However, the commenter expressed concern that utilities may leverage the imposition of the WEC as a pretext to increase rates on gas consumers despite over $1 billion being made available for financial and technical assistance by the Federal government. The commenter stated that it is imperative that the EPA closely monitors the implementation of the WEC to ensure that the financial burden is borne by oil and gas facilities and their shareholders, and not passed onto captive residential ratepayers. The commenter stated that their concern is particularly acute for vulnerable and low-income communities, who already face disproportionate energy cost burdens The commenter recommended that the EPA include cost recovery limitations, add transparent ratepayer cost-recovery mechanisms, consider additional subsidies for low-income ratepayers, collaborate with state regulatory agencies, and provide consumer education programs. Specifically, the commenter recommended the following measures be implemented:

1. Cost Recovery Limitations: Establish clear guidelines that limit the ability of oil and gas sector facilities and downstream utilities to recover the costs of the WEC through rate increases. This could involve setting caps on the percentage of compliance costs that can be passed through to consumers or requiring oil and gas companies to absorb a certain portion of these costs.
2. Transparent Ratepayer Cost Recovery Mechanisms: Require utilities to transparently demonstrate how compliance costs are calculated and justify any proposed rate increases to state utility regulators and the public. This could include mandatory detailed reporting on how WEC-related costs are being managed and the specific reasons for passing certain costs onto ratepayers.
3. Subsidies for Low-Income Ratepayers: In cases where some level of cost pass-through is unavoidable, establish a subsidy program or expand existing assistance programs to shield low-income ratepayers from the impact of increased energy costs due to environmental compliance. This approach ensures that the most vulnerable consumers are protected from potential financial burdens through government programs like the Low Income Home Energy Assistance Program administered by the U.S. Department of Health and Human Services.
4. Collaboration with State Regulatory Agencies: Strengthen partnerships with state regulatory agencies to ensure that state-level energy policies and rate-setting practices align with the goals of the WEC program. This can help harmonize efforts to minimize the financial impact on ratepayers across different jurisdictions.
5. Consumer Education Programs: Fund or require oil and gas companies to support consumer education programs that inform ratepayers about the reasons for the WEC, the

environmental benefits of reducing methane emissions, and how consumers can contribute to energy efficiency and conservation.

Response 2: The Waste Emissions Charge, as established in CAA sections 136(c) through (g), does not allow for additional limitations or requirements of the nature specified by the commenter. The EPA notes that Section 5.2 of the proposal RIA discusses market impacts of this action and finds that oil and gas prices will increase less than 0.1percent in 2024.

13.4 Benefits

Comment 1: Commenter 0302 asserted that the information provided about the models used to calculate the social cost of methane (SCCH4) in the proposed rule RIA is insufficient to satisfy CAA record sufficiency standards. The commenters stated that CAA section 307(d)(3) makes clear that the EPA must provide sufficient information to allow for independent verification of its modeling and results. The commenters stated that this conclusion is reinformed by the EPA's own "Guideline on Air Quality Models", which "serve[] to identify, for all interested parties, those modeling techniques and databases that the EPA considers acceptable." The commenters stated that for most models to be approved for use in a variety of CAA applications, they must meet several criteria, including: "The model must be accompanied by a complete test dataset including input parameters and output results. The test data must be packaged with the model in computer-readable form." The commenters stated that one purpose of this and other criteria is to allow the EPA to independently verify reported results that have relied on models.

The commenter asserted that the EPA cannot impose one set of modeling standards on state agencies and regulated entities, and use a more relaxed standard for itself. The commenter stated that Federal courts have held that it is abuse of discretion for the EPA to fail to follow its own prior standards, and cited to *Western States Petroleum Ass'n v. EPA,* 87 F.3d 280 (9th Cir. 1996) as supportive of this position. The commenter further stated that Federal courts have held that it is arbitrary for the EPA to rely on models the reliability and predictiveness of which cannot be independently determined because of insufficient collection and correlation of empirical data, and cited to *Ohio v. United States Environmental Protection Agency,* 784 F.2d 224 (6th Cir. 1986). The commenters stated that while the RIA is required by executive order (Executive Order 12866) rather than by statute, the D.C. Circuit has said that "when an agency decides to rely on a cost-benefit analysis as part of its rulemaking," that analysis is reviewable, with citation to *Nat'l Ass'n of Home Builders v. EPA,* 682 F.3d 1032, 1040 (D.C. Cir. 2012). The commenter stated that when an agency does rely on cost-benefit analysis as part of its rulemaking, a serious flaw undermining that analysis can render the rule unreasonable, and cited to *City of Portland v. EPA,* 507 F.3d 706, 713 (D.C. Cir. 2007). The commenter stated that in *Owner-Operator Indep. Drivers Ass'n v. Fed. Motor Carrier Safety Admin*., the D.C. Circuit vacated regulatory provisions because the cost-benefit analysis supporting them was based on an unexplained methodology.

The commenter stated that because the proposed rule explicitly relies on information in the RIA, the "data, information, and documents" referred to in paragraph (3) of CAA section 307(d)(3)

includes information, methodology, and data in the RIA. The commenter asserted that the information provided on the modeling used to substantiate the social cost of methane in the proposed rule's RIA falls well short of both the EPA's own standards, as stated in the "Guideline on Air Quality Models", and those of CAA section 307(d)(3).

The commenter noted that the RIA to the proposed rule references three models in relation to quantifying the climate impacts of the proposed rule based upon the SCCH4: the Data-driven Spatial Climate Impact Model (DSCIM) model, the Greenhouse Gas Impact Value Estimator (GIVE) model, and the Howard and Sterner metanalysis model. The commenter expressed a number of concerns related to the code associated with these models and made the following assertions:

- The unavailability of computer codes necessary to be able to reproduce the damage function coefficients in the DSCIM model. The actual coefficients for the damage function are provided in the provided codes. However, there is no code provided to ascertain the accuracy of these estimates, obtained via linear regression according to the model's documentation. The commenter stated that they corresponded with EPA staff regarding providing the codes for reproducing these coefficients, but staff only referred the commenter to the Climate Impact Lab.
- The EPA has made mistakes in its social cost of carbon modeling before and it is important that all codes and data be provided to the public in order to check the accuracy and robustness of results. By not providing the codes to estimate these coefficients, it is impossible to conduct proper robustness analysis and test sensitivity to important assumptions.
- As a result of the EPA's failure to provide access to the codes associated with the estimation of the damage functions it is not possible to check critical components of the damage function outlined in the DSCIM documentation. These include the subcomponents of the damage function, including coastal, agricultural, mortality, energy, and labor related damages.
- Without having the codes used in estimating the damage function coefficients, it is impossible to check the accuracy of the estimates used to calculate the climate impacts associated with the Proposed Rule, including those in Tables 5 and 6 of the Proposed Rule.
- Damage function coefficients may significantly influence the SCCH4, and as a result, it is important that the codes involving their estimation be made available to the public.

The commenter stated that the proposed rule fails to comply with both the EPA's own standards and those of CAA section 307(d)(3) because the DSCIM model fails to include complete test data including input parameters and output results.

In conclusion, the commenter asserted that given the strict requirements of CAA section 307(d)(3), the information deficiency claimed cannot be cured in a final rule and that proposed rule must either be withdrawn or reissued for a new round of notice-and-comment with the information deficiency corrected.

Response 1: The commenter's request for a withdrawal and/or reissuance of the Waste Emissions Charge rule due to their asserted claim of information deficiencies is meritless for two key reasons. The first is that the asserted information deficiency does not exist: the EPA SC-GHG estimates were developed through a rigorous and transparent process, and EPA has provided the public with extensive documentation and replication code supporting the updated SC-GHG estimates. Second, none of the regulatory decisions within the Waste Emissions Charge rule relied on the monetized benefits analysis which was informed by the SC-GHG. The SC-GHG estimates are included in the final RIA for this action pursuant to the EPA's responsibility under E.O. 12866 to provide monetized benefit-cost analysis for significant regulations.

The EPA SC-GHG estimates have gone through a rigorous and transparent process of development and review. The EPA technical report, "Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances," which explains the methodology underlying the new set of SC-GHG estimates was reviewed by an external peer review panel consistent with the guidelines set forth in the EPA's Peer Review Handbook 4th Edition, 2015.[14] The peer review was completed in May of 2023. The peer reviewers commended the agency on its development of the SC-GHG update, "calling it a much-needed improvement in estimating the SC-GHG and a significant step towards addressing the National Academies' recommendations with defensible modeling choices based on current science."[15] In addition, the EPA solicited public comment on the updated SC-GHG estimates as part of the EPA's December 2022 Supplemental Notice of Proposed Rulemaking, "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review." All files related to the EPA's updated estimates are available on the EPA's webpage (https://www.epa.gov/environmental-economics/scghg), including the EPA's final SC-GHG technical report, a link to the public comments received and the EPA's responses to the comments within the Oil and Gas rule docket, all files related to the peer review process, including the EPA's response to the peer reviewer recommendations, a spreadsheet tool to assist analysts in applying the updated SC-GHG estimates in policy analysis, and all replication instructions and computer code for the estimates.

The modeling steps for obtaining the DSCIM results used as one of the three damage models underlying the EPA SC-GHG update are described in the EPA final technical report, the Climate Impact Lab's user guide, and the replication files on the EPA's webpage. The EPA provided additional clarification to the commenter on the technical details of the DSCIM EPA model runs through the email correspondence referenced in the comment letter. As explained to the commenter, the information requested by the commenter goes back further in the modeling process than DSCIM EPA model runs used for the SC-GHG estimates applied in the RIA. As noted in *Coalition for Responsible Regulation, Inc. v. EPA*, 684F.3d 102, 117 (D.C. Cir. 2012), "The EPA is not required to re-prove the existence of the atom every time it approaches a

[14] https://www.epa.gov/sites/default/files/2020-08/documents/epa_peer_review_handbook_4th_edition.pdf
[15] EPA Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances, 2023. See https://www.epa.gov/environmental-economics/scghg for a copy of the final report and other related materials.

scientific question." The commenter has not requested the code used directly for the benefit-cost analysis of the RIA for the Waste Emissions Charge rule (which would be a simple Excel calculation multiplying tons of emissions by the previously calculated SC-GHG), nor the code used for the development of the SC-GHG estimates from the DSCIM model runs included in the final SC-GHG estimates used in the RIA, but rather the code used for estimating the underlying regional damage function coefficients in order to perform model runs with alternative discounting assumptions. As noted in the emails provided by the commenter, "If you're interested in going back further in the modeling process than DSCIM EPA, you should check out the broader DSCIM code base (https://github.com/ClimateImpactLab/dscim) made available by the Climate Impact Lab."

However, assuming arguendo that the commenter was unable to access the relevant code or modeling files through some fault of the Agency, this would still not justify a withdrawal of the rule. The SC-GHG estimates are included in the final RIA for this action pursuant to the EPA's responsibility under E.O. 12866 to provide monetized benefit-cost analysis for significant regulations. No regulatory decisions in the WEC rule rest on the magnitude of the monetized benefits resulting from these analyses. CAA section 136 prescribed aspects of the rule such as "the industry segments to which the waste emissions charge may apply" (89 Fed. Reg. at 5319), "segment-specific methane intensity thresholds" (89 Fed. Reg. at 5320), the magnitude and timing of the actual charges (*e.g.*, "increasing to $1,200 per metric ton of methane in 2025", 89 Fed. Reg. at 5320), and other details. Congress mandated what the charges should be, and nowhere did Congress direct that an E.O. 12866-mandated cost-benefit analysis be used in establishing, or to support or justify, any aspect of the Waste Emissions Charge rule, and the rule does not in fact depend on any such analysis. Therefore, the commenter's citations of *Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1040 (D.C. Cir. 2012), *City of Portland v. EPA*, 507 F.3d 706, 713 (D.C. Cir. 2007), and *Owner-Operator Indep. Drivers Ass'n v. Fed. Motor Carrier Safety Admin.* are all irrelevant.

Comment 2: Commenter 0298 noted that in determining the climate-related benefits of the proposed rule, the EPA used SCCH4 figures released alongside the final NSPS OOOOb and EG OOOOc rules instead of figures developed by the Interagency Working Group on Social Cost of Greenhouse Gases (IWG). The commenter stated that social cost of greenhouse gas (SC-GHG) figures, like any cost-benefit input, must be accurate and applied with consistency within and across regulations. The commenter stated that otherwise, their use only obscures the results and limits the utility of a particular cost-benefit analysis. The commenter stated that the EPA's decision to finalize and use its own SC-GHG figures, rather than the IWG's figures, is procedurally improper, threatens to undermine the purpose of the ongoing IWG process, and creates unnecessary and harmful regulatory uncertainty for industry. The commenter made the following assertions regarding the EPA's use of SC-GHG figures in the proposed rule:

- The EPA's use of its own SC-GHG figures is contrary to E.O. 13990. The commenter stated that the executive order provides that the IWG "shall" publish interim SC-GHG estimates (within 30 days of the order) and final SC-GHG figures (by January 2022) as well as provide recommendations for "a process for reviewing and, as appropriate,

updating" SC-GHG estimates and the underlying methodologies on which they are based, and that "[a]gencies shall use" the IWG's interim SC-GHG estimates "when monetizing the value of changes in greenhouse gas emissions."

- The EPA's independent development and implementation of new SC-GHG figures outside of the IWG process continues to undermine the centralizing function of the IWG process, which was instituted to "ensure that agencies were using the best available science and to promote consistency in the values used across agencies." The commenter stated that Federal agencies began using SC-GHG estimates (initially, the social cost of carbon dioxide) in 2008, following a decision by the Ninth Circuit requiring NHTSA to monetize the value of GHG emissions reductions in a rulemaking process. The commenter further stated that prior to IWG's inception various Federal agencies "used a wide range of values to estimate the benefits associated with reducing carbon dioxide emissions" (quoting from a 2010 IWG Technical Support Document) and provided examples a range of examples. The commenter asserted that the IWG was created to alleviate that inconsistency and that the EPA's reliance on its own SC-GHG figures, which depart significantly from the IWG's interim estimates, threatens to reintroduce the cross-agency inconsistency that the IWG was meant to avoid, and which is already materializing.
- The EPA's reliance on its own SC-GHG figures creates needless regulatory uncertainty for regulated industries. The commenter stated that regulatory certainty and predictability are critical for companies (and their investors, lenders, etc.) to make sound financial, capital planning, and investment decisions. The commenter further stated that while the IWG process has not been the fastest and the commenter has expressed serious concerns about its process and output to date, the commenter stated that it nevertheless serves a centralizing function, taking input from numerous Federal agencies and a wide range of stakeholders with different perspectives and expertise that may be relevant to distinct aspects of the SC-GHG's development. The commenter stated that the EPA's decision also raises new and thus far unanswered questions about whether the EPA intends to continue using its own separate SC-GHG figures indefinitely and how the EPA intends to use the figures (*e.g.*, only for sensitivity analyses, or as primary inputs for all cost-benefit analyses). The commenter asserted that increased regulatory uncertainty with respect to the SC-GHG risks chilling investment, especially in areas where GHG emissions are most prevalent, such as the energy production, power generation, and manufacturing sectors.

Response 2: The EPA responded to a similar comment for the Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review in 2023, and that response is applicable here. As the EPA stated in Response A-7-5:

> The EPA disagrees with the commenters' contention that it is procedurally improper for the Agency to develop updated SC-GHG estimates for use in RIA analysis. As an initial matter, commenters rely on an executive order that by its own terms creates no right or benefit enforceable against the U.S. government by any party. See E.O. 13990 sec. 8(c).

The EPA is a member of the Interagency Working Group (IWG) that was reconstituted in 2021 under Executive Order (E.O.) 13990 and is in the process of developing a comprehensive update of its recommended SC-GHG estimates. In February 2021, the IWG recommended the interim use of the most recent SC-GHG estimates developed by the IWG prior to the group being disbanded in 2017, adjusted for inflation (IWG 2021). As discussed in the February 2021 TSD[16], the IWG concluded that these interim estimates reflected the immediate need to have SC-GHG estimates available for agencies to use in regulatory benefit-cost analyses and other applications until updated estimates that address the National Academies' recommendations are available. The IWG's February 2021 TSD recognized the limitations of the interim estimates and encouraged agencies to use their best judgment in, for example, considering lower discount rates.

The EPA is committed to making evidence-based decisions pertaining to the methodologies used in the EPA analyses, guided by the best available science and input from the public and peer reviewers. Thus, as noted in previous the EPA regulatory impact analyses and the Proposal RIA and Supplemental Proposal RIA for this action, while the EPA is participating in the IWG's work under E.O. 13990, the Agency is also continuously reviewing developments in the scientific literature, including more robust methodologies for estimating the magnitude of the various direct and indirect damages from GHG emissions, and looking for opportunities to further improve SC-GHG estimation going forward. The EPA's development of updated SC-GHG estimates, and use of these estimates in sensitivity analysis in an RIA along with an external peer review and public comment process, is similar to the process by which SC-CH_4 estimates were first used in the EPA RIAs. As explained in the SC-GHG Report, the EPA began using estimates of SC-CH_4 and SC-N_2O from Marten et al. (2015)[17] in RIAs starting in 2015. The Marten et al. estimates were first applied in sensitivity analyses in RIAs of proposed rulemakings with CH_4 and N_2O emission impacts.[18] Following the completion of an external peer review of the application of these estimates to Federal regulatory analysis, the estimates were used in the main analysis of other rulemakings with CH_4 emissions

[16] Interagency Working Group on Social Cost of Carbon (IWG). 2021 (February). *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide: Interim Estimates under Executive Order 13990.* United States Government.
https://www.whitehouse.gov/wpcontent/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf

[17] Marten, A. L., Kopits, E. A., Griffiths, C. W., Newbold, S. C., and Wolverton, A., 2015. Incremental CH4 and N_2O mitigation benefits consistent with the US Government's SC-CO2 estimates. Climate Policy 15(2), pp.272–298.

[18] The SC-CH4 and SC-N2O estimates were first used in sensitivity analysis for the Proposed Rulemaking for Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2 (EPA and DOT 2015).

impacts (see the EPA 2015a[19], 2015b[20], 2016a[21], 2016b[22], and the EPA and DOT (2016)[23] for a discussion of public comments received on the valuation of non-CO_2 GHG impacts in general and the use of the Marten et al. (2015) estimates). In August 2016, the IWG folded these SC-CH_4 and SC-N_2O estimates into their SC-GHG recommendations to agencies within an addendum to the IWG's TSD (IWG 2016a[24], 2016b[25]).

The EPA's updated SC-GHG estimates and accompanying report will be among the many technical inputs available to the IWG as it continues its work. The EPA disagrees that the EPA's release of updated SC-GHG estimates within an the EPA RIA will create regulatory uncertainty for industry and other stakeholders. As described above, the EPA provides notice and public comment opportunities on each proposed regulation and its accompanying analyses, including any use of the SC-GHG in benefit-cost analyses. Thus, regulated entities and other interested stakeholders can anticipate having the standard opportunities for public comment on any proposed rule for which any SC-GHG estimates are applied in an analysis either accompanying or supporting such rulemaking. In this instance, commenters, including those here, had the opportunity to comment on all aspects of the data and methodologies that inform the presentation of the SC-GHG values in the final RIA accompanying this action.

The EPA notes that the SC-GHG estimates used in the final RIA here are not part of a sensitivity analysis, but the remainder of this prior response nonetheless addresses all of the commenter's contentions. As noted in response 1 in this section (13.4), the EPA is not relying on SC-GHG estimates as any part of the justification for this rule. Therefore, in addition to the observation

[19] U.S. Environmental Protection Agency (EPA), 2015a. Regulatory Impact Analysis for the Proposed Revisions to the Emission Guidelines for Existing Sources and Supplemental Proposed New Source Performance Standards in the Municipal Solid Waste Landfills Sector. August. https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0451-0086

[20] U.S. Environmental Protection Agency (EPA), 2015b. Regulatory Impact Analysis of the Proposed Emission Standards for New and Modified Sources in the Oil and Natural Gas Sector. EPA-452/R-15-002. August. https://www.regulations.gov/document/EPA-HQ-OAR-2010-0505-5258

[21] U.S. Environmental Protection Agency (EPA), 2016a. Regulatory Impact Analysis of the Final Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources. EPA-452/R-16-002. https://www.epa.gov/sites/default/files/2020-07/documents/oilgas_ria_nsps_final_2016-05.pdf

[22] U.S. Environmental Protection Agency (EPA), 2016b. Regulatory Impact Analysis for the Final Revisions to the Emission Guidelines for Existing Sources and the Final New Source Performance Standards in the Municipal Solid Waste Landfills Sector. EPA-452/R-16-003. https://www3.epa.gov/ttnecas1/docs/ria/landfills_ria_final-egnsps_2016-07.pdf

[23] U.S. Environmental Protection Agency (EPA) and U.S. Department of Transportation (DOT), 2016. Regulatory Impact Analysis of the Final Rulemaking for Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2. EPA-420-R-16-900. https://nepis.epa.gov/Exe/ZyPDF.cgi/P100P7NS.PDF?Dockey=P100P7NS.PDF

[24] Interagency Working Group on Social Cost of Greenhouse Gases (IWG). 2016a (August). Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under 12866. United States Government. https://www.epa.gov/sites/default/files/2016-12/documents/sc_co2_tsd_august_2016.pdf

[25] Interagency Working Group on the Social Cost of Greenhouse Gases (IWG). 2016b (August). *Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide*. United States Government. https://www.epa.gov/sites/default/files/2016-12/documents/addendum_to_scghg_tsd_august_2016.pdf

that interested stakeholders are able to fully participate in the public comment process here, we further note that the commenter has not explained how or why adherence to a particular intra-governmental process is relevant to providing "regulatory certainty" in the context of this action. The requirements of this rule would not be affected if a different SC-GHG methodology was used, or even if no estimates of the monetized climate benefits of reductions in methane emissions were provided in the RIA at all.

13.5 Comparison of Benefits and Costs

Comment 1: Commenter 0229 asserted that the EPA's estimate of a net benefit of $1.6 billion over the next decade presented in the proposed rule relied heavily upon a flawed methodology. Citing to *Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032,1040 (D.C. Cir. 2012) the commenter stated that "[a]nd when an agency decides to rely on a cost-benefit analysis as part of its rulemaking, a serious flaw undermining that analysis can render the rule unreasonable."

The commenter asserted that monetary value of climate benefits is of dubious value and that the manner of analyzing the impact of GHG emissions for their impact has been disputed. The commenter cited as support for these statements a comment letter from the State of W. Va., et al., on the Proposed Rule Setting Corporate Average Fuel Economy Standards (Oct. 16, 2023) and *Louisiana v. Biden*, 585 F. Supp. 3d 840 (W.D. La.2022), vacated for lack of standing, 64 F.4th 674 (5th Cir. 2023).

The commenter stated that even assuming the value of climate benefits, those benefits are not necessarily the product of the proposed rule's implementation but may be reflective of the Methane Tax itself. The commenter asserted that the EPA has not really provided a calculation of the proposed rule's benefit, only of the Methane Tax's. The commenter stated that the EPA should revise its analysis to focus more on the value of its implementation, and not on Congress's passage of the Methane Tax in the first place.

The commenter also noted that the proposed rule does not consider owner and operator's Methane Tax payments as a cost. The commenter stated that the EPA justifies this by describing the Methane Tax as a "transfer[]" that "do[es] no[t] affect total net benefits to society as a whole" (89 Fed. Reg. at 5,362) and that the Methane Tax "do[es] not affect total resources available to society." (Id.) The commenter asserted that this approach ignores the obvious consequences for consumers, including less reliability in energy grids and higher energy prices for consumers. The commenter further stated that the approach overlooks the inefficiencies that result from any new tax and stated that this is a reality even proponents of similar measures have recognized in the past. As an example, the commenter cited to Michael Waggoner, Why and How to Tax Carbon, 20 COLO. J. INT'L ENVTL. L. & POL'Y 1, 7 (2008) ("[A]ny tax has ill effects. There will always be inefficiencies in collecting taxes.").

The commenter asserted that it is inappropriate to omit this cost when most—if not all—of the proposed rule's provisions will affect the amount collected under Section 136. The commenter asserted that the amount collected from the Methane Tax could have been calculated without

rulemaking by just going to the reporting numbers and seeing what qualifies, and thus it is imperative to consider the costs from owners' and operators' payments, so that the proposed rule itself—and not merely the Methane Tax—can be properly assessed.

Response 1: The EPA's duties and authority for this rulemaking are derived under CAA section 136 of the CAA, and its decisions in this rulemaking are made within the confines of that authority and justified under the EPA's record-based analysis and analysis of the statutory language of CAA section 136. The analysis in the final RIA prepared under Executive Order 12866 is entirely distinct from the statutory determinations, are not used to justify this action, and are presented solely for the purposes of complying with E.O. 12866. Congress did not authorize the EPA to consider a formal cost-benefits analysis in implementing CAA section 136, and the EPA's decisions were based on the best reading of the statutory directives that Congress did provide. Nevertheless, the EPA believes the results of the analysis in the final RIA prepared under Executive Order 12866 of the WEC final rule is reasonable. The EPA disagrees with the commenter's assertion that the regulations implementing the WEC program should have been analyzed separately from CAA Section 136. The implementation features detailed in this final regulatory action are based on the best interpretation of the statutory text, so no practical distinction can be made between these two for analysis purposes. As stated in the revised circular A-4, "In general, an agency's first regulatory action implementing a new statutory authority should be assessed in a manner that accounts for the effects of the statute itself—that is, assessed against a without-statute baseline."[26] In addition, had the WEC been implemented without rulemaking, as the commenter recommended, stakeholders would be deprived of the opportunity of notice and comment for the EPA's interpretation and proposed implementation of the program. The EPA projected the emissions reductions, costs, benefits, and transfer payments that may result from the WEC implementation and released the analysis in the *Regulatory Impact Analysis of the Proposed Waste Emission Charge* (RIA). The RIA analyzes emissions changes and economic impacts of the WEC that arise through the application of cost-effective methane mitigation technologies, and through changes in oil and natural gas production and prices resulting from the WEC and associated mitigation responses. 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, therefore benefiting the WEC obligated party while simultaneously reducing methane emissions. See chapter 2 of the RIA for more information.

13.6 Uncertainty Analyses

Comment 1: Commenters (0224, 0230, 0279, 0298) stated that the RIA does not adequately consider the multiple regulatory requirements and associated costs that gas producers currently face. Commenter 0230 stated that the Congressional Budget Office estimated that the WEC

[26] OMB Circular A-4, 2023, https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf

would result in $6.35 billion in tax and result in higher energy costs and that this estimate was prior to revisions to subpart W that will inflate reported emissions.

Commenters (0224, 0230, 0279, 0298) stated that the RIA fails to consider the competing costs to operators of requirements including NSPS OOOOb/EG OOOOc, amendments to subpart W, Bureau of Land Management's Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule (87 Fed. Reg. 73588), the Federal Implementation Plan for Managing Emissions From Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah (87 Fed. Reg. 75334), Securities and Exchange Commission methane related rules, and state regulatory requirements. The commenter asserted that unlike other regulations, these costs are particularly relevant to adequate assessment of the WEC's impact, because they are costs operators must bear in addition to the first of its kind fee on the same pieces of equipment and at the same facilities.

Commenter 0224 stated that implementation of NSPS OOOOb/EG OOOOc will drive methane emissions inspection for facilities not previously subject, which along with the subpart W amendments, will increase the number of facilities reporting and subject to charge under the WEC. The commenter stated that failure to consider this increase in facilities has misinformed the public about the actual economic impact of the proposed rule.

Commenter 0298 stated that the failure to adequately consider and synchronize the overlapping proposals for the WEC Program, revisions to subpart W, and Methane Rule violates the CAA by being arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. The commenter asserted that the EPA must appropriately consider the overlapping impacts of contemporaneous rulemakings as part of their basic obligations under the CAA to adequately assess important, related aspects of the issues being addressed, and cited as support the holdings in *Allied Loc. & Reg'l Mfrs. Caucus v. EPA*, 215 F.3d 61, 68 (D.C. Cir. 2000); *Heating, Air Conditioning & Refrigeration Distributors Int'l v. EPA*, 71 F.4th 59, 63 (D.C. Cir. 2023); Portland Cement Ass'n v. EPA, 665 F.3d 177, 187 (D.C. Cir. 2011); *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983); *State Farm Mut. Auto. Ins. Co.*, 463 U.S.; and *Huawei Techs. USA, Inc. v. FCC*, 2 F.4th 421, 452 (5th Cir. 2021).

Commenter 0224 stated that the combined effect of methane detection technologies and penalties will disproportionately impact independent producers and push them out of business. The commenter stated that this will adversely affect local jobs and the economy and increase the number of orphan wells in the state, resulting in negative economic consequences for the State of Ohio and the United States.

Commenter 0279 stated that the RIA fails to consider the costs to royalty owners and local governments. The commenter stated that it is likely that operators will choose to plug and abandon uneconomic wells (*i.e.*, those wells that cannot bear the increased regulatory costs plus the fee). The commenter stated that as a result, royalty owners will lose a source of income, leaseholders will lose rental and other payments owed to them, and local and state governments will lose a source of tax revenue on extraction, production, and sale of oil and gas. The

commenter asserted that there will be indirect cost of the WEC on local government, school and fire districts, and community development programs. The commenter stated that the WEC will impact employment in communities-both direct jobs within the oil and gas industry, but also indirect jobs related to services used by oil and gas employees and housing.

Response 1: As explained in section VI.A. of the preamble for the final rule, 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 action and these results are presented in detail in the RIA accompanying this final rule. The EPA maintains that no regulatory decisions in the WEC rule rest on the magnitude of the results from these analyses, including the estimated costs, and the results are not used to justify this action. Rather, the EPA's duties and authority for this rulemaking are derived under CAA section 136 of the CAA, and its decisions in this rulemaking are made within the confines of that authority and justified under the EPA's record-based analysis and legal analysis of the statutory language of CAA section 136. As explained in the preamble of the proposed and final rule, under CAA section 136, Congress directed that the EPA impose and collect the WEC from WEC applicable facilities based on those facilities' emissions reported pursuant to subpart W of the GHGRP. As explained in the separate subpart W rulemaking, without reopening that rulemaking, under CAA section 136(h), Congress also directed the EPA to update subpart W of the GHGRP consistent with certain directives; namely, to ensure that reporting is based on empirical data, accurately reflects total methane emissions and waste emissions from applicable facilities, and allows owners and operators of applicable facilities to submit empirical emissions data that appropriately demonstrate the extent to which a charge is owed under the Waste Emissions Charge. Congress did not authorize the EPA to consider costs in implementing CAA section 136, and the EPA's decisions were based on the best reading of the statutory directives that Congress did provide. Nevertheless, the EPA believes the costs of the WEC final rule are reasonable.. The EPA also included some uncertainty analyses for the regulatory impact analyses in chapter 8 of the RIA for the proposed and final rules, including with regard to potential impacts of the updates to the subpart W rule on the regulatory impact analyses for the WEC final rule. To respond to this comment, without conceding that such additional analysis was required for this final rule, the EPA updated our uncertainty analyses in chapter 8.1 for the RIA accompanying the final rule. While again maintaining that no regulatory decisions in the WEC rule rest on the magnitude of the results from these analyses, the EPA also notes that the uncertainty analyses do not change the EPA's conclusion that the costs associated with the final WEC are reasonable, consistent with the direction from Congress. See also our response in section 13 of this response to comment regarding the RIA analyses. See chapter 5 of the RIA for the total predicted cost of methane mitigation under the WEC.

To the extent commenters are arguing that the EPA must consider or weigh economic impacts in making decisions in this final rule, the EPA disagrees for the same reasons explained above in this response. However, the EPA also disagrees that it did not analyze the economic impacts for independent operators and the impact on employment and the economy. Employment impacts of environmental regulations are generally composed of a mix of potential declines and gains in different areas of the economy over time. The RIA projects small changes in oil and natural gas

production and prices. As a result, demand for labor employed in oil and natural gas related activities and associated industries might experience adjustments as there may be increases in compliance-related labor requirements as well as changes in employment due to quantity effects in directly regulated sectors and sectors that consume oil and natural gas products. However, regulatory employment impacts can vary across occupations, regions, and industries; by labor and product demand and supply elasticities; and in response to other labor market conditions. Isolating such impacts is a challenge, as they are difficult to disentangle from employment impacts caused by a wide variety of ongoing, concurrent economic changes. Please see chapter 9 of the RIA for more information on the small business analysis and employment impacts of the WEC.

13.7 Distributional and Economic Analyses

Comment 1: Commenters (0231, 0279, 0291) stated that the RIA fails to fully consider the impacts of the WEC to Tribes. The commenters stated that for Tribes that own mineral interests, the monetary consequences will be significant in the form of lost royalties, lease payments, loss of employment, and loss of income to Tribal contractors. The commenters stated that the proposed rule does not contemplate sharing revenue with affected Tribes or otherwise protecting against adverse economic impacts. Commenter 0231 requested that operations on Tribal lands be excluded from the WEC or in the alternative, that funds from Tribal operators be redistributed directly back to the respective Tribe.

Commenter 0231 stated that as a Federal agency, the EPA has an obligation to uphold the Federal trust responsibility to Tribes and to protect Tribal lands, assets and resources. The commenter stated that the EPA has an obligation to fully evaluate the costs to Tribal governments, including through indirect impacts.

Commenter 0231 stated that operators have indicated that they will shut down older wells that would be too expensive to retrofit or are underperforming due to these wells being no longer economically feasible to operate under the WEC and that if these wells are shut down, Tribal revenue will be cut as production declines. The commenter requested that the applicable charge amount be reduced for facilities on Tribal land.

Commenter 0291 also contended that proposed action may force producers to plug and abandon wells before the end of their useful life which would have a direct negative economic impact on all North Dakotans, including Tribal members, due to decreases in royalties and declining economic activity from impacted oil and gas production. Over-regulation of the oil and gas industry increases production costs and discourages investment in the industry with little, if any, environmental benefit.

Response 1: The EPA recognizes the Federal government's trust responsibility, which derives from the historical relationship between the Federal government and Indian Tribes. The EPA acts consistently with the Federal government trust responsibility by implementing the statutes it administers and consulting with and considering the interests of tribes when taking actions that

may affect them. The EPA consulted with Tribal officials early in the process of developing this regulation and considered Tribal input in the development of the final rule. Please refer to section VI.F. of the preamble to the final rule for more information on consultation and coordination with Tribal governments. Furthermore, the EPA is not provided discretion under CAA section 136 to exempt or otherwise modify application of WEC to facilities located on Tribal lands. Additionally, indirect costs to Tribes are considered outside the scope of factors required for this analysis for E.O. 13175.

Comment 2: Commenter 0282 requested that the EPA consider allowing WEC fees paid within Tribal air jurisdictions to be available, in part, to Tribes that wish to develop and implement Tribal Implementation Plan (TIPs) for adoption of the emissions guidelines established in 40 CFR. Part 60 subpart OOOOc. If not possible, the commenter requested that sufficient CAA grant funding be available to Tribes that wish to develop and implement EG OOOOc-implementing plans. The commenter noted that the lack of funding assistance from the EPA, and a Tribe's establishment of a regulatory program that does not include an inherent funding mechanism, places the Tribe at a significant disadvantage in obtaining delegation to administer regulatory programs designed to be delegable to Tribes.

Response 2: The Waste Emissions Charge as laid out in the Inflation Reduction Act of 2022 is solely a charge placed upon some oil and gas producers with methane emissions above a certain threshold. There is no mechanism for grants under Section 136(c) of the Clean Air Act. However, the EPA as an agency has a long history of working with Tribal government and has disbursed grants to different Tribes in the past.

13.7.1 Small business/entity analysis

Comment 1: Multiple commenters (0194, 0206, 0212, 0226, 0285, 0297, 0300, 0833, 0865) expressed concern regarding the impact of the proposed rule on small businesses, particularly with respect to the resources available for methane reduction as well as time and expertise required to understand and comply with contemporaneous requirements under NSPS OOOOb/EG OOOOc, subpart W, and the WEC. Commenter 0226 stated that the proposed rule would particularly impact marginal wells and that these wells do not emit methane in any appreciable amount. Commenter 0212 noted that the Energy Information Administration reports that 85 percent of 525,287 oil wells and 73.3 percent of 435,016 natural gas wells operating in 2008 were marginal wells.

Commenters (0206, 0270, 0291) stated that the costs to comply with the WEC will result in bankruptcy of oil and gas operators, especially smaller operators who only slightly exceed the reporting requirement of 25,000 metric tons of CO2e but may incur a significant charge related to emissions. The commenters stated that this will result in orphan oil and gas wells that will be left to states to address. Commenter 0291 added that many North Dakota mineral lessees are small businesses with little room for unplanned changes or increased operating costs from taxes or production fees that would render their wells uneconomical. These lessees may now be faced with a choice to continue their livelihood at great expense that may never be recovered or abandon those locations. The loss of this production not only impacts the energy security of the

nation but the economic security of thousands of North Dakotans who depend on the royalties generated from these wells. These small producers all support other small service businesses that may also be forced into uncertain economic situations.

Commenters (0221, 0297, 0300) stated disagreement with the statement in the preamble to the proposed rule that "this proposed action would not have a significant economic impact on a substantial number of small entities under the RFA." Commenter 0221 stated that the EPA identified that 439 of 472 WEC Obligated Parties were small entities and asserted that these small entities will be substantially impacted by the costs of paperwork, recordkeeping, methane mitigation, and/or paying WEC fees, interest, and penalties. Citing to the 1996 Small Business Regulatory Enforcement Fairness Act (SBREFA), the commenter stated that the purpose of the RFA, in part, is to encourage the effective participation of small businesses in the Federal regulatory process, create a more cooperative regulatory environment among agencies and small businesses that is less punitive and more solution-oriented, and to make Federal regulators more accountable for their enforcement actions by providing small entities with a meaningful opportunity for redress of excessive enforcement activities. The commenter stated that the proposed rule seems contrary to these purposes, and noted that the SBREFA mandates that small business advocacy review panels to consult with small entities on regulations expected to have a significant impact on them be convened before the regulations were published for public comment. The commenter stated that there is no mention in the rule preamble whether such panels were convened to discuss the impacts of the proposed rule on small businesses. Commenter 0297 stated that their conservative estimate is that at least 1/3 of the active well inventory in Texas is at risk of closure due to the combined effects of the proposed rule and NSPS OOOOb/EG OOOOc. Commenter 0300 stated that the EPA is aware that companies operating marginal wells are primarily small businesses and that therefore to suggest that the proposed rule will not have a significant impact on small businesses is incorrect.

Several commenters (0185, 0194) requested that additional time be provided for small businesses to reduce emissions prior to assessment of the WEC. Commenter 0185 stated that Congress did not specify an implementation date for the WEC.

Commenters (0220, 0297, 0936) stated that WEC was not intended to apply to small business producers. Commenter 0936 stated that the EPA should draw reasonable boundaries around the definition of individual facilities for emission intensity calculations, so that aggregations of large amounts of disparate wells and gathering lines do not lead to charging a fee on marginal facilities that Congress intended to exempt or facilities that have minimal actual emissions. The commenter asserted that if brought into greenhouse gas reporting, small businesses face a minimum of $900,000 annual tax.

Commenters (0212, 0297) contended that small producers typically need to operate hundreds of small wells to be economic and would be subject to the Methane Tax threshold with as few as 220 oil wells or 300 natural gas wells which violates congressional intent to exclude small businesses and marginal wells from the WEC. The commenters also contended that the EPA would make it extraordinarily costly and unmanageable where a small producer also operates

G&B systems because the G&B emission factors are based pipe mileage and not on actual emissions. As such, emissions cannot be reduced without eliminating milage (*i.e.* reduce or eliminate operations). This would result in reducing the energy infrastructure rather than reducing waste methane from "bad actors" and taking away the incentive for a G&B system operator to eliminate leaks if there is no way to escape the fee by doing so. For example, using the EF in the proposed subpart W revisions, a small producer with as little as 560 miles of unprotected pipe would equate to 300 marginal natural gas wells and thereby pull that producer into the Methane Tax.

Response 1: The EPA acknowledges commenters' concern regarding the impacts of the Waste Emissions Charge on small businesses. In accordance with the regulatory flexibility act (RFA), the EPA analyzed the impacts of the Waste Emissions Charge on small entities, including small businesses, small organizations, and small government jurisdictions, and determined that the final action would not have a significant economic impact on a substantial number of small entities. Many small businesses in the oil and natural gas industry will not be subject to the WEC because only facilities reporting more than 25,000 mt CO_2e to subpart W are WEC applicable facilities. Further, many WEC applicable facilities' emissions will not be subject to WEC obligations because their emissions fall below the relevant intensity thresholds specified by Congress. Further details of the determination can be found in section VI.C. of the preamble to the final rule. Details of the analysis underlying the determination can be found in the *Regulatory Impact Analysis of the Waste Emissions Charge*, available in the docket for this rulemaking.

Commenters cited requirements of Small Business Regulatory Enforcement Fairness Act (SBREFA). As described in section VI.C. of the preamble, this action is in compliance with the requirements of the regulatory flexibility act (RFA) as amended by SBREFA. Because the EPA has certified that this action would not have a significant impact on a substantial number of small entities, it was not required to convene a small business advocacy review (SBAR) panel. No SBAR panel was convened for the Waste Emissions Charge.

Commenters expressed concern regarding the impacts of complying with multiple regulations impacting the oil and natural gas industry at the same time, including the Waste Emissions Charge, GHGRP subpart W, and the NSPS OOOOb and EG OOOOc. The EPA acknowledges commenters' concern and refers the commenter to our full response here. However, the EPA notes that the cost to small business from complying with other rules are outside the scope of the small business analysis for the Waste Emissions Charge rule, and have not been included in the analysis in the final RIA for the Waste Emissions Charge. To respond to this comment, without reopening those separate rulemakings, the EPA also notes that in each of those separate rulemakings the EPA also complied with the Regulatory Flexibility Act for each respective rule and refers the reader to those rulemakings for the details of the EPA's discussion and analysis.

Commenters requested changes to the regulatory requirements or implementation schedule in order to avoid impacts on small businesses and owners or operators of marginal wells. While the statutory language in section 136 of the CAA included several exemptions to the Waste Emissions Charge in specific circumstances, it did not include exemptions for small businesses or marginal wells. Regarding comments that Congress did not specify an implementation date for

the WEC, this topic is covered in section 8 of this document, Remittance and Assessment of WEC.

For response to comments concerning the definition of a facility under the proposed rule, refer to section 1.1 of this response to comment document. For response to requests for exemption or alternative application of the proposed rule to small businesses, refer to section 17.10. The EPA is not certain the basis for the claim that small businesses subject to reporting would be subject to a minimum $900,000 expense. The EPA notes that only those methane emissions that exceed the waste emissions threshold for a particular applicable facility are subject to charge, and not the total methane emissions from that facility.

Comment 2: Commenter 0293 requested that the EPA consider whether netting will offer the same benefits to small owners or operators with a limited number of affected facilities under common ownership or control. Commenters (0293, 0656) stated that the EPA must take into account the possible effects on smaller operations that may be near this threshold, whether the effects of the proposed rule will be disproportionately burdensome to small owner or operators, and whether the anticipated costs associated with the proposal are reasonable for small owners or operators.

Response 2: The EPA acknowledges the commenter's request that the EPA consider whether transferring negative net WEC emissions will offer the same benefits to small owners or operators with a limited number of WEC obligated facilities under common ownership or control. Because small owners and operators may own or control fewer WEC applicable facilities than larger owners or operators, the netting provision may have a less substantial impact for smaller owners and operators than larger owners and operators. The analysis of impacts on small entities is based on information reported to GHGRP subpart W for RY 2022, and therefore reflects the ownership of facilities as reported to the EPA for that year. Refer to section II.B. of the preamble to this final rule and section 3 of this response to comment document for more information on the transfer of negative quantities of net WEC emissions. For more information regarding the RFA on small businesses, please refer to chapter 9 of the RIA.

13.7.2 Employment impacts

Comment 1: Commenters (0184, 0336, 0936) stated that implementation of the proposed rule would create jobs in the methane mitigation sector. Several commenters stated that the methane mitigation sector has double in size since 2017 and that an analysis by the BlueGreen Alliance found that over ten thousand net direct and indirect jobs will be created annually in manufacturing, construction, operations and maintenance positions nationwide through 2035 to support efforts to reduce methane emissions.

Response 1: Refer to Section 9.2 of the final RIA for discussion and estimates of the likely employment impacts of the WEC.

13.7.3 Environmental justice

Comment 1: Commenter 0183 expressed support for the EPA's efforts to ensure that attention is given to reducing emissions from oil and natural gas infrastructure in or near underserved communities and communities of color. The commenter stated that children from underserved communities and communities of color are more susceptible to the health risks posed by climate change. The commenter expressed their belief that the EPA's continued emphasis on environmental justice in this proposed rule will promote health equity.

Response 1: The EPA acknowledges the commenter's statements regarding the health risks posed by climate change and impacts upon communities with environmental justice concerns. Refer to Section 9.3 and 9.4 of the final RIA and section VI.J. of the preamble to the final rule for additional discussion of the expected 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.

Comment 2: Commenters (0180, 0221, 0291, 0833) stated that the proposed rule would have potential negative environmental justice impacts upon economically disadvantaged communities. Commenters stated that increased fuel prices and energy costs impact low-income individuals the most. The commenter stated that based upon data from the U.S. Energy Information Administration, nearly half of U.S. households utilize natural gas heating. Commenter 0291 asserted that any increases in production and compliance costs will likely be passed on to the consumer, driving up the price of energy at a time when demand is rapidly increasing. This would lead to higher electricity, heating fuels, food, and transportation prices, which disproportionately impacts low-income Americans and can lead to food security issues. Commenters encouraged the EPA to examine the potential negative economic implications if the rule is finalized.

Response 2: The EPA disagrees with the commenter's assertion that the proposed rule would lead to negative environmental justice impacts upon economically disadvantaged communities due to increased fuel and energy costs. The economic impacts analysis conducted as part of the RIA included consideration of supply and cost impacts upon natural gas and oil. This analysis 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 was 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 was estimated to be in 2026, with an estimated production decrease of 1.27 million barrels of oil. Further discussion of this analysis is available in the *Regulatory Impact Analysis of the Waste Emissions Charge*, which is available in the docket for this rulemaking.

13.7.4 Distributional climate impacts

Comment 1: Commenter 0162 stated that it is estimated that the financial costs from fossil-fuel generated air pollution and climate change surpasses $820 billion in health costs each year and that this burden falls heaviest on vulnerable communities. The commenter stated that the upfront

investment to address leakage would have a significant ROI because of the savings on healthcare cost.

The commenter stated that for those living and working close to wells, the negative impacts are higher and that a geospatial analysis released by Earthworks and FracTracker shows that more than 17.3 million people, including 3.9 million under the age of 18, live, work, and go to school within a half mile radius of active oil and gas production operations.

Response 1: The EPA acknowledges the commenter's statements regarding air pollution and climate change costs.

14 Burden Estimate (Paperwork Reduction Act)

Comment 1: Commenters (0180, 0221) stated the WEC rule will greatly increase the paperwork and recordkeeping burden on the EPA and WEC respondents. The commenters note the first three years of the program were estimated to cost the EPA $5,670,955 and respondents $1,700,304 annually but the actual costs are likely to be higher due to unfamiliarity and glitches with new programs. The commenters suggested the burden would be reduced if the EPA focused on offering more incentives rather than collecting data, fees, interest, and penalties. The commenters raised concern the WEC program appears to conflict with two policy standards of the Paperwork Reduction Act: 1) minimize the paperwork burden on the public and other entities and 2) minimize the cost to the Federal Government of creating, collecting, maintaining, using, disseminating, and disposing of information.

Response 1: The EPA acknowledges the commenters' concerns. While the commenters made general statements regarding the Paperwork Reduction Act (PRA), the commenters did not identify specific aspects of the proposed WEC rule where the EPA was overly burdensome, nor did the commenters identify ways to minimize burden to the Agency nor to affected WEC respondents. Consistent with the obligation established by CAA section 136 on the EPA to impose and collect a charge, subject to statutorily specified exemptions, the EPA has taken steps to minimize the added paperwork and recordkeeping burden and avoid duplicative reporting, while maintaining effectiveness of the rule through the utilization of existing systems such as the electronic Greenhouse Gas Reporting Tool (e-GGRT) system. As stated in section III.A. of the preamble to the final rule, the EPA has adjusted the WEC filing deadlines. These revisions in the final rule are expected to reduce administrative burdens and to minimize uncertainty in the WEC submittal process by allowing time for verification of methane emissions and for the most flexibility for netting methane emissions. Refer to section VI.B. of the preamble to the final rule for the burden estimate associated with the reporting and recordkeeping requirements in the final rule..

15 Environmental Justice

Comment 1: Commenters (0180, 0221) noted that while the preamble highlighted the health benefits to minority populations and low-income citizens, there is no mention of the disproportional impact of higher natural gas and oil prices on environmental justice

communities. The commenters urged the EPA to focus on providing more incentives and less administrative burdens and penalties on producers. The commenters noted that according to the American Gas Association, over 75 million households use natural gas for at least one appliance, and 85percent use natural gas for space heating, while 72 percent use natural gas for both space and water heating. The commenters added over 80 percent of all households with natural gas have two or more gas appliances in the home, and 50 percent have three or more appliances. The commenters stated one in five households have all four types of natural gas end-use appliances. The commenters stated the total number of natural gas end-uses in households was 194 million in 2020; and space heating and cooking grew the most since 2015 with 5 million new households using natural gas for heating and 8 million more using it for cooking. The commenters noted water heating and drying also grew by 3.2 million and 1.7 million since 2015.

Response 1: The EPA disagrees with the commenters' suggestion that the EPA should place focus on providing more incentives and less penalties on producers. Incentives and funding currently exist as part of the Inflation Reduction Act (IRA) to provide financial and technical assistance to reduce methane emissions from the oil and gas sector through the Methane Emissions Reduction Program (MERP). As part of MERP, the EPA and the U.S. Department of Energy (DOE) will provide more than $1 billion in financial and technical assistance. This funding may be used to incentivize methane mitigation and monitoring as established through CAA section 136(a) of the Clean Air Act. The EPA is moving expeditiously to implement incentives for methane mitigation and monitoring; however, those steps are outside the scope of this rulemaking. For current information on the funding opportunities under the MERP, stakeholders should visit: https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program.

Regarding comments to the potential for disproportionate economic impacts on low income and minority populations, due to increases in natural gas prices, the EPA refers the commenters to the section 9.3 of the final RIA for the Environmental Justice Analysis, including a summary of impacts to households and the responses to comments found in section 16.0 of this document.

Comment 2: Commenter 0897 noted one rationale the EPA gave for the WEC is that WEC-affected entities often operate in communities with "a higher percentage of…racial and ethnic minorities." The commenter stated that although the cause of "environmental justice" is commendable, ethnicity is an extraneous factor to what the WEC is addressing as climate change impacts all ethnic groups worldwide. The commenter suggested celebrating emissions reductions for minorities is irrelevant at best and establishes a bias against non-minorities in the EPA's decision-making at worst.

Response 2: The EPA disagrees with the commenter. The EPA is not establishing a bias against non-minorities, nor considering race or ethnicity, in its decision-making process. The EPA refers the commenter to section 9.3 of the final RIA for the Environmental Justice analysis; and to section 9.4 for the analysis on the Distributional Climate Impacts. The EPA constructed an analysis based on reporting year 2022 for facilities with methane emissions that were above the waste emissions threshold (*i.e.* WEC applicable emission greater than zero) in the United States, demographic data published by the United States Census Bureau, county-level incidence reports

of asthma and heart disease provided by the Centers of Disease Control, and county-level cancer risk using information in the AirToxScreen database to inform the analysis across all populations.

Comment 3: Commenter 0928 stated they live in a poverty-stricken area near several sources of air pollution, all of which have been fined for violations. The commenter urged that a larger portion of fines should go to the impoverished communities most impacted.

Response 3: The EPA acknowledges and empathizes with the concern raised by the commenter regarding living in impoverished communities; however, the allocation of penalties and the enforcement of violations is outside the scope of the current rulemaking. For information on the enforcement of air quality regulations, please refer to https://www.epa.gov/enforcement/air-enforcement.

Comment 4: Commenters (0201, 0336, 0936) agreed it was essential to recognize the environmental justice implications of methane emissions and that too often, marginalized communities bear the brunt of pollution and environmental degradation. Commenter 0201 noted this can lead to health and economic consequences for these communities. The commenter stated that by targeting methane reductions, not only was climate change being addressed but also environmental racism and injustice. Commenter 0336 added that in the Appalachia region, the elderly and low-income communities are some of those disproportionately impacted and that one third of West Virginians live within a half mile of an oil and gas facility. The commenter added in addition to methane, oil and gas operations release hazardous air pollutants and volatile organic compounds, which can worsen respiratory diseases. The commenter noted West Virginia's high ranking nationally for the prevalence of heart attack and coronary heart disease, cancer, and chronic respiratory disease, making residents particularly vulnerable. Commenter 0936 noted research done by Protégete identified counties with high populations of Latinos have higher rates of hospitalization. The commenter further stated that across the United States, 1.8 million Latinos live within a half mile of an oil and gas facility. Commenter 0936 added that the oil and gas companies are the largest industrial source of methane and through reducing methane emissions in the United States helps to set a bar for efforts in other countries to also reduce their emissions meet the global methane pledge.

Response 4: The EPA acknowledges and empathizes with the concerns raised by the commenters regarding the health and economic impacts for those living in impoverished or disproportionately impacted communities. The EPA refers the commenter to section 9.3 of the final RIA for the Environmental Justice analysis; and to section 9.4 for the analysis on the Distributional Climate Impacts. The EPA constructed an analysis based on reporting year 2022 for facilities with methane emissions that were above the waste emissions threshold (*i.e.* WEC applicable emission greater than zero) in the United States, demographic data published by the US Census Bureau, county-level incidence reports of asthma and heart disease provided by the Centers of Disease Control, and county-level cancer risk using information in the AirToxScreen database to inform the analysis across all populations.

16 Other Statutory and Executive Order Reviews

Comment 1: Commenters (0180, 0211) raised concerns related to Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use. The commenters believed the estimates for natural gas production to decrease by 10.7 mcf and crude oil production by 1.27 million barrels in 2026 may be artificially low because many smaller entities may choose to cease or reduce production rather than comply with WEC. The commenters added that any production cuts can drive up costs ultimately paid by the consumer.

Response 1: The EPA disagrees with the commenters. As discussed in section VI.H. of the preamble to the final rule, with regard to the cost of energy production or distribution, the guidance indicates that a regulatory action produces a significant adverse if it is expected to increase costs in excess of one percent. The EPA has estimated through this rulemaking the maximum impact to the natural gas market is a 0.03 percent decrease in production, along with a price increase of 0.05 percent. The maximum impact to the oil market, as a result of this rulemaking, is projected to be a 0.03 percent decrease in production with an increase of price to be 0.03 percent. The commenters did not provide sufficient rationale as to why the estimates may be artificially low nor did the commenters provide data for the EPA to reconsider whether there could be a significant impact to the energy supply. Therefore, the EPA is not reevaluating any impacts to the energy supply made by this rule.

Comment 2: Commenter 0180 argued that the EPA made an improper finding that the WEC proposed rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). The commenter noted in the preamble, the EPA stated that 439 of 472 WEC obligated parties were identified as small entities. The commenter asserted these small entities will be substantially impacted by the costs of burdensome paperwork and recordkeeping and the cost of either mitigating methane emissions or paying the WEC fee, interest, and penalties. The commenter stated there was no mention in the preamble whether the EPA engaged panels to discuss the impacts of the proposed rule on small businesses as expected under the RFA. The commenter added the WEC rule seems contrary to the RFA also in that it is focused on forcing behavior through fees, interest, and penalties rather than via incentives.

Response 2: The EPA refers the commenter to section 9.1 of the final RIA for the Small Business analysis and to sections VI.B. and VI.C. of the preamble to the final rule.

17 General Comments

17.1 Comment Period Extension

Comment 1: Commenters (0145, 0140, 0905, 0139, 0142, 0166) requested a 30-day extension of the comment period to fully analyze the proposed WEC Rule and its connections to the subpart W rule and Methane Rule. Commenter 0148 urged the EPA to extend the comment period by an additional 60 days for the same reasons.

Response 1: The proposed rule was published on January 26, 2024, and the public comment was originally scheduled to end on March 11, 2024. On February 20, 2024, the EPA published a notice extending that deadline to March 26, 2024. The comment period was extended to provide the general public additional time for participation and comment. The EPA considers the 60-day comment period to be appropriate and to provide a meaningful opportunity to comment on the proposed rulemaking. Consistent with Clean Air Act requirements, all data, information, and documents relied upon in the proposed rule was included in the docket on the date of publication of the proposed rule.

The Agency also notes that the EPA held a public hearing on February 12, 2024, for stakeholders to provide oral presentation of comments, data, and views on the proposed rulemaking.

17.2 General Comments on Methane, Climate Change, and Public Health

Comment 1: Commenters (0154, 0160, 0162, 0163, 0167, 0170, 0174, 0183, 0233, 0286, 0346, 0482, 0505, 0521, 0526, 0681, 0815, 0936, 0938) stated that exposure to methane is associated with several public health risks including cancer, respiratory issues, cardiovascular disease, congenital heart defects, a 25 percent increase in children's asthma, an increase in low birth weight which can lead to lifetime health complications, specifically for 3.9 million under the age of 18, and 645,400 children under the age of 5 who reside within a half-mile of active oil and gas production operations.

Commenters (0138, 0179, 0233, 0482, 0869, 0936) stated that low-income communities and communities of color are more likely and disproportionally impacted and suggested that revenue from the charge will be used to mitigate the health effects of methane and associated pollution in low-income and disadvantaged communities.

Response 1: The Agency acknowledges the commenters concerns. These comments are general, non-rule specific regarding methane emission impacts to public health and specifically to low-income and disadvantaged communities. Please refer to section V. of the final preamble for this rulemaking as well as the final rule RIA for a discussion of expected impacts of the final rule and the expected impact on 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.

Comment 2: The commenter 0138 stated that the rule would reduce annual methane emissions by about 8.3 million metric tons, equivalent to the annual emissions from more than 1.8 million passenger vehicles. The rule would also prevent 260,000 premature deaths and 775,000 asthma-related hospital visits annually, as well as avoid 25 million tons of crop losses and 73 billion hours of lost labor from extreme heat.

Response 2: The EPA acknowledges this comment regarding estimated impacts from the rule and notes that the EPA's estimates for impacts of the final rule can be found in section V. of the preamble to the final rule as well as the final rule RIA.

Comment 3: Commenter 0236 stated that methane emissions disproportionately burden Indigenous communities such as the Navajo Nation which has 65 percent higher methane emissions from oil and gas companies than the national average. The commenter pointed to an analysis by Environmental Defense Fund and Taxpayers for Common Sense that found that oil and gas companies on public and Tribal lands wasted over $500 million worth of gas in 2019, suggesting that these emissions are a significant issue across Tribal lands.

Response 3: The EPA acknowledges the commenters concern. Please refer to section 9 of the final rule RIA for discussion of the environmental impacts of the final rule, including the impact of methane and climate change upon Indigenous communities.

Comment 4: Commenters (0170, 0171, 0200, 0225, 0304, 0325, 0330, 0336, 0340, 0566, 0680, 0827, 0924, 0933, 0936) contended that oil and gas infrastructure is the largest industrial source of methane. Methane emissions are an important cause of rapid climate change resulting in heatwaves, droughts, wildfires, declines in agricultural and seafood harvests, flooding due to both heavy rainfalls and sea level rise and more cases of infectious diseases spread by mosquitoes, ticks, and water and food contamination. Commenters urged the Agency to make every effort to reduce methane emissions by the petrochemical industry and contended that reducing methane pollution is one of the fastest, most cost-effective ways to slow the current rate of global warming.

Commenters (0184, 0225, 0277) were also concerned that climate change presents significant risks to both the economy and the financial system.

Commenter (0170) applauded the EPA for including flaring in the proposal which is entirely avoidable with current emissions control technologies. Flaring impacts communities located near oil and gas wells, most often communities of color and people living with low incomes.

Response 4: The EPA acknowledges the commenters comments and refers them to section 6 of the final rule RIA for a discussion on the climate benefits of final rule, as well as section 9.4 of the final rule RIA for discussion of the distribution of these benefits and impacts across the United States.

17.3 General Support or Opposition

Comment 1: Commenters (0138, 0143, 0146, 0149, 0152, 0153, 0154, 0156, 0158, 0159, 0161, 0165, 0174, 0176, 0177, 0178, 0179, 0181, 0184, 0186, 0188, 0191, 0192, 0200, 0201, 0203, 0217, 0218, 0219, 0225, 0236, 0257, 0259, 0260, 0264, 0265, 0274, 0277, 0286, 0292, 0294, 0296, 0305, 0306, 0307, 0308, 0309, 0310, 0311, 0313, 0315, 0319, 0321, 0325, 0327, 0330, 0331, 0333, 0335, 0337, 0338, 0341, 0342, 0346, 0354, 0375, 0408, 0428, 0434, 0453, 0468, 0469, 0489, 0490, 0496, 0497, 0498, 0500, 0501, 0502, 0505, 0508, 0510, 0511, 0516, 0517, 0518, 0519, 0520, 0523, 0527, 0530, 0532, 0533, 0535, 0568, 0571, 0588, 0597, 0620, 0628, 0629, 0630, 0631, 0633, 0636, 0644, 0645, 0647, 0649, 0651, 0653, 0655, 0657, 0658, 0660, 0662, 0663, 0665, 0667, 0670, 0675, 0676, 0677, 0678, 0683, 0688, 0689, 0695, 0698, 0700, 0705, 0810, 0811, 0812, 0813, 0816, 0819, 0826, 0828, 0831, 0832, 0834, 0838, 0841, 0842,

0847, 0851, 0853, 0859, 0863, 0870, 0871, 0872, 0873, 0878, 0881, 0882, 0884, 0885, 0889, 0895, 0907, 0909, 0910, 0911, 0912, 0913, 0914, 0915, 0916, 0917, 0918, 0919, 0920, 0921, 0922, 0923, 0925, 0926, 0928, 0929, 0930, 0931, 0932, 0933, 0935, 0936) supported the Proposed Rule as a necessary step to driving the uptake of innovative technologies and job opportunities, reducing greenhouse gas emissions and the energy industry's contribution to climate change and hold emitters responsible for their actions.

Commenter 0184 pointed out the Oil and Gas Climate Initiative (OGCI) as well as some non-OGCI members are already well below the threshold levels, demonstrating that these targets are readily achievable.

Response 1: The EPA acknowledges the commenters support for this rulemaking.

Comment 2: Commenter 0327 stated that CAA section 136 provides clear and nondiscretionary instructions to the EPA to develop the WEC program, meet certain parameters, and administer the program according to a particular schedule and using particular dollar figures and thresholds. For those statutory provisions that either expressly or implicitly delegate to the EPA the authority to make a regulatory judgment or to perform a gap-filling role and thus exercise interpretive judgment, the proposed rule exhibits correct and sensible judgment by the agency.

Response 2: The EPA acknowledges the commenter's support for this rulemaking.

Comment 3: Commenter 0168 expressed support for the rule but said that the EPA could go a step further and provide an account of where the money collected goes. Commenter 0201 stated that revenue that can be reinvested into renewable energy initiatives and communities disproportionately affected by environmental degradation. Commenter 0936 expressed support for the proposed rule and encouraged the EPA to limit the scope of the exemptions to the greatest extent allowed under the text of the Inflation Reduction Act. The commenter also encouraged the EPA to require robust reporting and inspection for any facilities or companies seeking exemptions. The commenter provided estimates that prior to exemptions, the waste emissions obligations for the offshore drilling facilities would create a revenue of $40.5 million in 2024, $54 million in 2025 and $67.5 million in 2026. The commenter stated that this would create significant incentives for industry to reduce its emissions.

Response 3: The EPA acknowledges the commenters' support for the proposed rule and the provided estimates of waste emissions obligations for the offshore petroleum and natural gas production industry segment. Refer to the final rule RIA for the EPA's estimates of these quantities. To the extent that commenters provided specific comment on reporting and inspection provisions in the final rule, refer to sections 10 and 11, respectively, of this response to comment document.

Comment 4: Commenters (0196, 0207, 0343, 0515, 0577, 0719, 0850) opposed the Proposed Rule. Commenter 0196 asserted that the WEC is unnecessary in light of the regulations in place and anticipated, and would be difficult to implement, duplicative, punitive, and will be costly. The commenter asserted that the proposed rule requirements measurement technology that does

not exist, should not apply to oil and natural gas industry methane emissions that are already regulated, and would result in industry segments being charged multiple times. As an example, the commenter stated that pipelines that cross multiple AAPG geological provinces would pay the charge multiple times.

The commenter further stated that the charge is unnecessary as reducing methane emissions is a top priority for the oil and natural gas industry and stated that emissions relative to oil and natural gas production were down nearly 70 percent between 2011 and 2019 and are expected to continue to trend downward.

The commenter asserted that the charge violates a commitment by the Biden Administration and Democrat Leadership to not increase taxes on small businesses and asserted that most businesses that would be subjected to the WEC are small businesses. The commenter further stated that the WEC is a punitive measure that could have negative consequences for the economy and the environment. The commenter stated that the proposed rule ignores methane emissions from agriculture, waste management, and coal; that oil and natural gas account for nearly 70 percent of energy consumption in the U.S. and increasing fees could have ripple effects including reduction in jobs supported throughout the economy. The commenter further stated that the WEC is counterproductive to environmental objectives as increased product costs for natural gas will reduce demand as users shift to cheaper fuels like coal.

Commenter 0207 requested acknowledgement that their comment was read.

Commenter 0270 specified that the rule should not be promulgated without meaningful and significant cooperation with the state regulatory agencies and encouraged the EPA to sign the Memorandum of Agreement (MOA) with the Interstate Oil and Gas Compact Commission, a framework for the EPA to work more cooperatively and efficiently with the state regulators.

Commenter 0211 contended that it is unlikely that a directive to tax emissions, in this case methane emissions, exceeding certain, not clearly defined, thresholds, will result in emissions reductions and in fact may lead to the misallocation or inefficient deployment of capital to achieve the stated policy goal.

Commenter 0221 presented latest economic data for the State of Utah and had serious concerns regarding not only the aims of the current Proposed Rule but also its effects, implementation, and unintended consequences.

Response 4: The EPA disagrees with these comments, and specifically disagrees with commenters' allegations that the methane charge is a tax. 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 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 CO2e of greenhouse gases emitted per year pursuant to subpart W

of the Greenhouse Gas Reporting Program (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). As discussed in sections I.B. and I.D. of the preamble of the final rule, the EPA is finalizing this rule under the authority provided by CAA section 136.

Comment 5: Commenters (0213, 0240, 0295, 0303) expressed opposition to the Proposed Rule and contended that it is used only as a means to force early compliance of the EPA's NSPS OOOOb/EG OOOOc regulations with the false promise of an "off-ramp" for the methane charge under the IRA MERP which was quickly and poorly developed without proper legislation. Commenters said that the EPA needs to offer small businesses the opportunity to reduce their emissions prior to assessing this charge, or they will make compliance unaffordable.

Response 5: The EPA disagrees with the commenters' assertion. To the extent that the commenters provided specific comment regarding the regulatory compliance exemption, those comments are addressed in section 5 of this response to comment document.

Comment 6: Commenters (0289, 0291, 0297) expressed opposition to the Proposed Rule and were concerned that the EPA may have overreached in its implementation of the MERP under the IRA and believe that the existing proposed WEC language is clearly not in line with Congressional intent. The commenters urged the EPA to reconsider the current provisions of the proposed WEC rule and amend the language to include the suggestions above to further align with clear Congressional intent, which was to be a tool to incentivize further emissions reduction and not to be used as a punitive action against the industry to stifle oil and gas production, increase energy, food, and consumer good costs; further erode the health, prosperity, and well-being of communities; and compromise our national energy security.

Commenter 0281 raised concerns with the EPA's proposed rule and its interpretation of the enabling statute. While Congress authorized a Waste Emissions Charge, there are major deficiencies within the proposed rule. Because the EPA neglected to begin subpart W rulemaking in a timely manner which has resulted in a) the likelihood that a WEC charge will be assessed based on two different emissions calculations regimes and b) a simultaneous promulgation of the subpart W revisions and the WEC despite the interconnected nature. The commenter asserted that the Proposed Rule would result in burden, chaos, and uncertainty, will imperil the livelihood of thousands of New Mexicans and hinder the nation's energy independence without providing for the policy objectives of Congress.

Commenter 0297 asserted that the IRA gave the EPA wide latitude in interpretation of the rules and structure of the program, and that the EPA's proposed rule was written to subject the greatest number of operators and volumes of production to the WEC than were contemplated by the legislation or permitted under any prior statutory authority.

Response 6: The EPA disagrees with the commenters' assertions that the existing proposed WEC language is not in line with Congressional intent. To the extent that the commenters provided specific comment on proposed rule requirements or the EPA's interpretation of CAA

section 136 at the time of proposal, those comments are addressed in section 7 of this response to comment document. As discussed in sections I.B. and I.D. of the preamble of the final rule, the EPA is finalizing this rule under the authority provided by CAA section 136.

Comment 7: Commenters (0209, 0682) argued that the rule will be excessively burdensome, especially on independent small producers and small stripper wells which make up majority of the US's production of 12,000,000 bbls/day. Commenter 0209 pointed out that oil and natural gas industry in Kansas supports over 100,000 jobs, over $3 billion in family income, and over $1.4 billion in state and local tax revenue. The average Kansas oil well produces 2 barrels per day and the average natural gas well produces 25 Mcf of natural gas per day. The small businesses that produce Kansas wells account for 92 percent of the oil and 63percent of the natural gas produced in Kansas.

Commenter 0222 was concerned about a one size fits all approach to emissions as many of the wells they operate are below 15 BOPD and emissions are minimal, and the additional monitoring as proposed will be cost prohibitive making these wells uneconomical.

Response 7: The EPA disagrees with commenters assertion that the rule will be excessively burdensome on independent small producers. For discussions on small business impacts associated with this rulemaking refer to section 13.7 of this response to comment document and section VI.C. of the preamble to the final rule.

Comment 8: Commenter 0144 contended that rather than resolving the source of the problem through offering subsidies on better scrubbers, incinerators, or other processes that would incentivize the reduction of methane emissions, the EPA assumes that taking money from a large corporation will reduce methane using this rule. This is the definition of arbitrary and capricious.

While not opposed to the proposed rule, commenter 0188 favored a phased approach that increases the Waste Emissions Charge over a three-year period yet allows an owner or operator with multiple applicable facilities to aggregate emissions for its total operations. Commenter 0830 suggested that instead of venting and flaring, the EPA should require extractors to store and sell "excessive" methane to end users to meet their energy needs.

Commenter (0577, 0850) believed that alternative strategies to the Proposed Rule like incentivizing emission reduction technologies, promoting collaboration, and investing in further research into cleaner energy sources should be a priority and a better option.

Response 8: These comments are out-of-scope of the WEC rulemaking. 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.” Implementation of CAA section 136(a) incentives for methane mitigation and monitoring are outside of the scope of this rulemaking. Refer to section 17.9 response 5 of this response to comment document that pertains to emission reduction technologies and section 17.10 response 7 of this response to comment document that discussions incentives.

Comment 9: Commenter 0868 opposed the Proposed Rule because it does not consider the differences between methane and nitrous oxide when studied in laboratories versus how it acts when it is released into the atmosphere. In the formulation of this potential rule, it seems the considerations of the ability of water vapor to cancel heat absorption by these gases in Earth's atmosphere has been neglected. The commenter contended that due to previous revisions, emissions are being overestimated and have been documented as increasing without any evidence proving that this is the case rendering the Proposed Rule unreasonable and also including inaccurate emissions totals.

Response 9: This comment is out-of-scope of the WEC rulemaking. This final rule implements CAA section 136(c) in establishing a charge on methane emissions that exceed an applicable waste emissions threshold from specified facilities in the petroleum and natural gas systems industry. See section I.C.1. in the preamble of the final rule for a discussion on the impacts of atmospheric methane on the environment, public health and welfare.

Comment 10: Commenters (0190, 0225, 0249, 0328, 0340, 0702) believed that the MERP program will encourage oil and gas companies to implement zero-emitting process controllers and advanced monitoring techniques and mitigate methane emissions and resulting health hazards. Commenter 0225 also said that the WEC complements financial support from the EPA's Methane Emissions Reduction Program (MERP), which includes $1.55 billion in funding for states, tribes, and operators to improve methane monitoring and mitigation.

Commenter 0701 stated that the MERP program must be implementated as soon as possible.

Response 10: The EPA acknowledges commenters concerns. As established under CAA section 136(g), the WEC shall be implemented beginning with respect to emissions reported for calendar year 2024.

Comment 11: The commenter 0141 urged the EPA to not continue funneling subsidies, grants, loopholes and other activities to the natural gas industry and supply chain unless facility owners start providing full transparency of methane emissions at every facility from well to end use along with the actual input natural gas flow and output natural gas flow as a verification of emissions. The commenter contended that currently, at least half of all facilities do not provide annual emissions and for the facilities that do provide methane emissions, it is grossly underreported. The commenter suggested the EPA should rather invest the Waste Reduction incentive Program directly into residential homes for enabling hydrogen electric storage. The commenter also stated that the 'jobs' associated with natural gas is a misnomer propagated by natural gas facility owners and that the majority of the dedicated jobs associated with natural gas supply chain are concentrated in centralized headquarters with a few regional employees. Real job creation would occur if the EPA invested funds into building and managing home hydrogen electric storage facilities.

Response 11: This comment is outside the scope of the WEC rulemaking. 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." Implementation of CAA section 136(a) incentives for methane mitigation and monitoring are outside of the scope of this rulemaking.

17.4 NSPS/EG Alignment (Besides Regulatory Compliance Exemption)

Comment 1: Several commenters (0209, 0213, 0214, 0224, 0240, 0278, 0298) expressed concern that the EPA did not adequately address the cross-cutting issues and that the three regulations (NSPS/EG, subpart W, and WEC) should be better aligned. Commenters (0240, 0278) stated that differing and conflicting requirements (*e.g.*, definitions, monitoring, sampling, and inspections) will lead to regulatory uncertainty and noncompliance that may directly impact WEC for obligated parties. Commenter 0213 stated that the EPA should not rush the implementation of the WEC when subpart W changes have not been finalized and before implementation of EG OOOOc. The commenter believed that giving producers more time to develop plans for methane reductions before the tax is assessed would better meet the regulatory goal of methane reduction. Commenter 0214 stated that amendments to the WEC would ensure fairer implementation and enforcement and ensure the avenues for exemptions are available in the WEC.

Response 1: The commenter did not make any specific requests for the EPA's consideration in finalizing the WEC rule under part 99. In general terms, the EPA notes that it is not possible to completely align the regulations, as each is promulgated under a different authority of the CAA, and each includes certain statutory constructs and definitions which on their face, differ. An example are the terms "affected" and "designated" facility from CAA section 111(b) and (d), respectively, versus CAA section 136(d) use of the term "applicable facility." Compliance, for purpose of the regulatory compliance exemption, is determined against the NSPS and state, Federal, and Tribal EG OOOOc-implementing plans and definitions, monitoring, sampling, and inspections required by subpart W do not impact this compliance determination. The EPA also notes that since the proposal of the WEC rule, the revisions to subpart W rulemaking have been finalized.[27] Regarding implementation of the WEC, CAA section 136(g) requires that the charge begins for emissions reported for calendar year 2024, which is before the deadline for state, Federal, and Tribal EG OOOOc-implementing plan submittals. See discussion in Chapter 5 of this RTC document about the regulatory compliance exemption, including timelines for plans implementing EG OOOOc.

Comment 2: Several commenters (0209, 0213, 0229, 0281, 0282, 0293, 0905, 0936) expressed concern with the timing of the initial charge collection given the status of interrelated rulemakings and requested additional time to implement the programs. Commenters (0194, 0209, 0213) stated that additional time is needed, especially for small businesses, to understand the NSPS OOOOb/EG OOOOc, subpart W, and WEC regulations. These commenters were concerned that many questions remain unanswered such as whether this new charge applies to small businesses, how to properly calculate the charge, what the total cost of compliance will be, and how methane emissions might be reduced to reduce charges. Specifically, the commenters

[27] See 89 FR 42221.

believed that since the exemption from the charge in EG OOOOc will not be available for several years, sources should be allowed to implement the methane reductions required under EG OOOOc, before the charge is assessed. The commenters noted that Congress did not specify an implementation date for the charge, so the EPA should delay the regulation to enable better compliance. Commenter 0213 also requested that the WEC be based on actual emissions data rather than estimates, and that delaying implementation of the WEC until the subpart W amendments generate actual emissions data.

Commenter 0905 also requested that implementation be deferred until all of the connected requirements and compliance obligations under both subpart W and EG OOOOc are fully in effect. Commenter 0281 noted that the first year of WEC charges in 2024 will be based on rules which are not finalized until a quarter of a way through 2024. The commenter is concerned that there is no way for operators to adjust operations, make capital allocations, and train their workforces in time.

Commenter 0936 stated that the timeline is problematic for owners and operators wishing to use alternative technologies, as that approval process hasn't started yet. The commenter is concerned about a scenario where the operator chooses a technology to implement the WEC reporting, and risks that the technology won't be approved. The commenter suggested that a timeline of January 1, 2025, to begin collecting data is more reasonable as it is after the rules are finalized and operators can be given the chance to implement finalized empirical rules and technology.

Commenter 0282 provided several options for easing implementation:

1. Delay the effective date of the WEC until methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 of the Clean Air Act have been approved and are in effect such that operators have the options for a regulatory exemption.
2. Allow operators an exemption to the WEC fee, for years prior to full implementation of standards and plans pursuant to subsections (b) and (d) of section 111 of the Clean Air Act, if a WEC applicable facility specific methane emission reduction plan is implemented, approved by the Administrator, and being followed.
3. Allow operators to offset the WEC fees with money spent for proactively implementing programs to reduce methane emissions from each facility.
4. Delay the effective date of the WEC for one year, such that the first reporting would be for CY2025, to allow for finalization of subpart W changes and to provide operators with one round of reporting prior to fees being assessed.

Commenter 0293 noted several issues regarding workloads on states to complete Federally mandated actions. By way of example, the commenter noted that numerous permit actions will be required to establish legally and practicably enforceable limits for new and existing sources under the NSPS and EG. This commenter is concerned that this permitting workload will be exacerbated by permits required by existing sources to implement methane reduction strategies while state and Federal plans implementing EG OOOOc are being drafted. The commenter also is concerned about supply chain issues for supplies, equipment, and personnel to implement

methane emissions controls. In summary, the commenter requested that the EPA delay implementation of the WEC until the final rules developed under EG OOOOc are approved.

Commenter 0229 expressed concern regarding the status of petitions for review submitted for the section 111 rules. The commenter noted that "an agency must … acknowledge and account for a changed regulatory posture the agency creates," particularly when that change pertains to a "contemporaneous and closely related rulemaking."[28] The commenter noted that if and when the section 111 rules are sent back to the EPA, the EPA will be forced to propose a new rule, or will deprive parties of opportunity to comment by attempting to "backdoor" a new approach through the Final Rule. Instead, the commenter urged, the EPA should avoid these poor outcomes by waiting to see how the legal challenges to the section 111 rules play out, before finalizing the methane charge regulation.

Commenter 0903 suggested that to accelerate the adoption of cost-effective methane mitigation technologies, including those required under NSPS OOOOb/EG OOOOc, the EPA should establish a framework, relying on the NSPS OOOOb/EG OOOOc Alternative Test Method (ATM) program, in the subpart W and WEC final rules for approval of qualifying technologies for methane emissions measurement, that owners and operators may use to submit facility specific emissions data. The commenter urged the EPA to convene a group, consisting of operators, academics, and advanced technology providers, to support this integration.

Response 2: The commenters make several points. First, commenters questioned the impact on small businesses. The EPA also determined that the final rule would not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act. See the discussion in section VI.C. of the preamble to the final rule.

Second, the commenters requested a delay to the implementation of the WEC for various reasons, and stated that Congress did not specify an implementation date for the charge. While the EPA agrees that Congress did not specify a timeline for the regulation to implement the WEC, section 136(g) of the CAA clearly states that the charge "shall be imposed and collected beginning with respect to emissions reported for calendar year 2024 and for each year thereafter." Given that the WEC must be imposed beginning for emissions that occur in 2024, delaying the WEC regulation would be illogical and would significantly complicate implementation. For example, if implementation of the WEC rule were delayed to a future year, any facility transactions between WEC obligated parties would make it difficult not only to implement netting and calculate charges, but could also result in situations in which there would no longer be an entity that on which a charge could be imposed. See also response 8 in section 5 and response 4 in section 17.7 in this response to comment document.

[28] Portland Cement Ass'n v. EPA, 665 F.3d 177, 187 (D.C. Cir. 2011).

Third, with respect to the use of alternative technologies to collect data for WEC reporting, the EPA believes the commenter is referring to reporting under subpart W, not the WEC. Comments relating to subpart W are out of scope for the purposes of this rulemaking.

To the extent the commenter is speaking to data collection under the WEC rule, the final WEC rule does not have any directly applicable data collection or monitoring requirements but relies on subpart W data per CAA section 136(c) (for applicability) and CAA section 136(e) (for determination of the charge). The EPA discusses the burden associated with implementing the final WEC rule in section IV.C. of the preamble to the final rule. Further, as discussed above in this comment, the EPA cannot delay (or exempt beyond the specified exemptions) implementation of the WEC.

Fourth, with respect to allowing operators to offset the WEC fees with money spent for proactively implementing programs to reduce methane emissions from each facility, the EPA believes that while the WEC does not directly allow for off-setting costs as described, the structure of the WEC is such that programs which reduce methane emissions will offset a WEC applicable facility's obligation by reducing its emissions above the waste emissions threshold.

Comment 3: Commenters (0216, 0270, 0273, 0287, 0905) expressed concern about the interplay between subpart W, WEC, and NSPS OOOOb/EG OOOOc with respect to providing meaningful comment. Commenter 0216 stated that the rule should be withdrawn until the status of related rules which provide the foundation for the WEC are final and have undergone judicial review. Commenter 0287 explained that the WEC will not be implemented in a regulatory vacuum, and the timing of other actions impact the WEC. The commenter noted that in addition to these regulatory actions, the EPA opened a nonregulatory docket for the design of the WEC program, but stated they will not consider those comments unless resubmitted under the regulatory docket. The commenter is concerned that the regulatory uncertainty of the intertwining proceedings impedes their ability to consider "all angles" of the proposed rule and suggested that the EPA take the lead in identifying comments from related proceedings that should be considered and coordinating resolution. The commenter urged the EPA to engage in additional rulemaking to clarify the aspects of the WEC rule, as well as the requirements of subpart W and NSPS OOOOb/EG OOOOc.

Commenter 0905 stated that all three of the rules should be administered in a reasonable and coherent manner. The commenter explained that procedurally, the EPA has not given commenters a meaningful opportunity to comment on the proposed WEC rule, because the subpart W provisions were not finalized during the WEC comment period. Commenter 0273 similarly commented and noted specific issues with the required calculation methodology and references to the subpart W rule (which were proposed at the time of the WEC proposal) and the equivalency determination for NSPS OOOOb/EG OOOOc.

Response 3: The EPA disagrees with these comments. *i.e.* The EPAnotes that because the subpart W rulemaking was proposed before the WEC, commenters had the opportunity to consider and comment on the subpart W proposed rule in advance of the WEC, and commenters

also had notice of the revised subpart W framework while reviewing the WEC proposal. Moreover, while the WEC relies on data reported under part 98 to determine applicability and thresholds, the mechanics of implementing the WEC are not directly tied to subpart W. In other words, while the data that comes from subpart W is "plugged into" the WEC, how that data is derived is immaterial for the purposes of establishing the mechanics of the WEC program.

In response to the EPA's treatment of comments received on the nonregulatory docket, the EPA gave notice that it would not formally consider comments that were not submitted as part of the WEC rulemaking, and the agency is not required to do so. To the extent that comments from the nonregulatory docket were resubmitted as part of the WEC rulemaking, they were considered in the development of the final WEC rule.

Comment 4: Some commenters (0273, 0287) identified specific areas of concern regarding consistency issues between NSPS OOOOb/EG OOOOc, subpart W, and the WEC. Commenter 0287 provided several areas of potential conflict between NSPS OOOOb/EG OOOOc, subpart W, and the WEC. Specifically, the commenter noted the following issues for the EPA to consider:

1. NSPS OOOOb identifies OGI as BSER for fugitive emission reductions, but the subpart W emission factors for OGI are on average 1.6 times higher than Method 21 emission factors (proposed subpart W, Table W-2). By employing NSPS OOOOb BSER (instead of the more costly Method 21 alternative), operators will increase their methane fee obligation. The EPA should retain the current alignment between the leaker emission factors for Method 21 at 10,000 parts per million ("ppm") leak definition and OGI.
2. Subpart W includes an "undetected leak adjustment factor" that artificially inflates leak emissions. The addition of an undetected leak factor assumes that the observed leak data collected from the leak surveys is unreliable--even though the associated survey is performed based on the EPA monitoring and training criteria (98.234(a) and the requirements referenced therein such as NSPS OOOOb). This assumption is arbitrary and capricious. GPA does not support the implication in the proposed subpart W that these technologies and the EPA's regulations result in insufficient leak detection.
3. The NSPS OOOOb "no identifiable emissions standard" for covers and closed vent systems is not reasonable to achieve for NSPS OOOOb affected sources. This potentially negates an operator's ability to claim the WEC compliance exemption.
4. NSPS OOOOb has an annual measurement work practice standard for reciprocating compressor rod packing emissions, with rod packing replacement if measured emissions exceed the emissions standard. Alternatively, an operator can route the emissions to control. This would reduce emissions and reduce an operator's fee obligation, which are desired outcomes by both the EPA and industry. However, if an operator routes rod packing emissions to a control device instead of venting, the operator is then subject to the very burdensome and potentially impossible to comply with cover, closed vent system, and control device requirements. These burdensome NSPS OOOOb requirements disincentivize operators from reducing methane emissions.
5. NSPS OOOOb is triggered for natural gas-driven process controllers when more than 50 percent of the number of controllers is replaced. This discourages operators from

replacing controllers with new controllers with lower emissions (*e.g.*, high bleed to low bleed) because this triggers early implementation of the expensive and non-trivial project to convert a site to instrument air or otherwise meet the zero emissions standard. The EPA should allow all existing sources to meet standards pursuant to EG OOOOc implementing state and Federal plans, even if NSPS OOOOb reconstruction is triggered.

Commenter 0273 noted that misalignment between the rules creates additional reporting burdens and costs on operators. By way of example, the commenter noted that the proposed reporting format for WEC is by owner and operator, whereas the GHGRP is by parent company. The commenter is concerned that the inconsistency in reporting formats will result in additional time needed to prepare reports and has the potential to increase the likelihood of errors in submissions.

Response 4: Regarding the five comments above, about areas of potential conflict between NSPS OOOOb/EG OOOOc, subpart W, and the WEC, the EPA notes that each of these comments relate to final rules under part 60 and part 98 which are beyond the scope of this rulemaking.

Comment 5: Commenter 0238 stated that the proposed rule interfaces with the Super Emitter Response Program established under the final finalized "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review" (89 FR 16820). The commenter stated it is unclear to both state-level regulators and the regulated community how the Super Emitter Program will function in practice and specifically how it will function in relation to the proposed WEC rule.

The commenter also stated that the EPA did not quantify or analyze the regulatory impacts that the Super Emitter Program has on the proposed WEC rule and requested that the EPA provide a regulatory analysis of those impacts and an opportunity for commenters to review and comment on that analysis before moving forward with the proposed WEC rule.

Response 5: Comments related to the quantification of emissions under subpart W are out of scope of this rulemaking. Because emissions from the Super Emitter Program (SEP) are incorporated into subpart W and the SEP is also not part of the WEC rulemaking, these comments are out of scope of this rulemaking. See also the EPA's response in section 13.6 of this response to comment document. Without reopening, the EPA refers the commenter to the final preamble and RTC for NSPS OOOOb and EG OOOOc for the rationale for the final requirements for the SEP. Without reopening, the EPA also refers the commenter to the final preamble and RTC for the 2024 subpart W final rule for information on how emissions from SEP are incorporated into subpart W. Further, the EPA currently is developing the site for submittal of data under the SEP[29], which is beyond the scope of this rulemaking, but is expected to be available later in 2024.

[29] See https://www.epa.gov/compliance/super-emitter.

The EPA notes without reopening that in finalizing the SEP under part 60, the EPA met its obligations under the Administrative Procedures Act (APA) to determine the regulatory impacts on those rules. *e.g.*

17.5 Subpart A Amendments

Comment 1: Commenters (0239, 0298) stated that the EPA should align requirements for past reporting years in the final rule with responsibilities under subpart W. Commenter 0239 stated that under both the WEC and subpart W, the party responsible for initially reporting the emissions under subpart W for an asset should remain responsible for any subpart W reporting revisions, as well as WEC reporting and fees, or penalties or interest assessed under either rule during their period of ownership. Commenter 0298 stated that all obligations for past fees and filings under both rules should be consistent and remain with the party obligated to make the filings.

Commenter 0239 stated that multiple emissions reports and reporters will be necessary to ensure accurate emissions reporting, as required by the IRA, in years when assets are sold and that this is because those who generated the emissions at a particular moment in time are the ones with the most reliable operational knowledge and supporting data to provide an accurate accounting of the emissions. The commenter disagreed with the statement in the proposed rule that "there is no means by which methane emissions could be accurately allocated across multiple owners or operators in a single year." The commenter asserted that subsequent purchasers of a facility are less likely to have as accurate information about the operations of the facility prior to their period of operation and provided as an example the source category of other large release events. The commenter stated that these one-time emission events can and should be allocated to the owner/operator at the time of the event, and stated that subsequent purchasers are far less likely to have accurate information about. The commenter continued that equipment subject to subpart W may not operate during all times of a calendar year, or may not be operated similarly by a new purchaser.

Commenter 0239 agreed with the statement in the proposed rule that "[b]ecause 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." However, the commenter asserted that the proposed rule would create this challenge as (1) the reporting party definitions do not align, (2) the proposals differ in where the obligations fall, and (3) the WEC proposed rule does not account for scenarios where assets from the same facility will be divided between owners. The commenter asserted that the inconsistencies between the subpart W and WEC proposals raise several questions and challenges:

1. If the new owner changes past subpart W reports, how does that impact the responsibility of past owners for past WEC payment and filing?

2. What happens if the new and past owners disagree as to the past reporting revisions? Will past owners have an opportunity to review submissions by new owners and vice versa?
3. What happens in scenarios where assets from the same facility are separated as part of a sale and become parts of separate facilities during a reporting year? Under the EPA's proposed approach, how will those emissions be accounted for if "there is no means by which methane emissions could be accurately allocated across multiple owners or operators in a single year"? What role does the "historic reporting representative" proposed in the subpart W proposal play in WEC determinations?

The commenter recommended that the EPA revise both proposals so that emissions reporting and WEC obligations follow the specific asset that emitted them, and should remain the responsibility of the party responsible for reporting at the time of reporting.

Commenter 0239 stated that the terminology in the subpart W and WEC proposals do not align as under the subpart W proposal, the owner/operator of the facility submits GHG emissions reports whereas the WEC proposal places the reporting and payment obligation on the "WEC obligated party." The commenter stated that this suggests that (contrary to the EPA's indications) the subpart W reporting party could be different from the WEC reporting party. The commenter further stated that the proposed subpart W revisions introduce the role of a "historic reporting representative" which the WEC proposal makes no reference to this role or how it relates to the WEC reporting and recordkeeping obligations.

Commenter 0239 noted the WEC proposal language regarding data resubmissions and questioned if it was the EPA's intention to suggest that a WEC obligated party could be penalized for changes in subpart W reported information after a point in which the WEC obligated party has no ability to respond. The commenter stated that the EPA must make clear in the final rule that a WEC obligated party always has an opportunity to respond to revisions from the EPA before incurring any penalty, and should introduce a clear limitations period after which the Agency can no longer seek penalties for past filing discrepancies.

Response 1: See section II.A. of the preamble to the final rule for the EPA's response to these comments. After consideration of the comments on this issue submitted on both this proposal and the subpart W proposed rule, the EPA is finalizing a new paragraph 40 CFR 98.4(o) to align the reporting requirements under 40 CFR part 98 with the final requirements for the WEC obligated party and the WEC obligated party's designated representative in 40 CFR part 99. Under this new paragraph, when there is a change in the owner(s) or operator(s)as of December 31 of the year prior to the transaction (*i.e.* the owner(s) or operator(s) that are selling or divesting the facility) must choose a historic reporting representative that will submit the GHGRP report (if it was not submitted prior to the transaction) and continue to respond to the EPA questions and resubmit the GHGRP report for reporting years for which they are appointed as the historic reporting representative, and the historic reporting representative will only have access in e-GGRT to revise data for the reporting years for which they are the historic reporting representative. Similarly, the designated representative for the new owner(s) and operator(s) will not have the ability in e-GGRT to resubmit reports for reporting years prior to the transaction. This change is finalized for all facilities that report under subpart W, for the years in which they

reported under subpart W, as the determination of whether a facility is a WEC affected facility may change from year to year, and it is much more straightforward for the reporting obligations to remain consistent for all facilities subject to subpart W.

Regarding the recommendation that multiple emission reports be submitted for assets that are transferred during a reporting year, it is not clear if the commenter was suggesting that multiple reports be submitted pursuant to part 98, part 99, or both. The EPA notes that this concern was addressed in the context of part 98 in section III.A.1.b. of the preamble to the final subpart W rule. The EPA notes, without reopening, the EPA's response in that rulemaking, that the commenter did not identify specific issues with the current structure supporting the contention that it leads to inaccurate reporting of emissions data. Rather than ensure accurate reporting as the commenter claimed, the EPA explained that preparation and submission of multiple reports by different entities related to the same emission sources would lead to duplicative burden and raise the potential for inconsistencies in reported data. The EPA therefore stated that it would be neither practical nor supportive of the CAA section 136(h) directive to ensure the accuracy of reported data for the reporting responsibility for a single facility to be duplicated in multiple reports among multiple owners and operators. If the commenter was recommending that multiple reports be submitted under part 99 for assets that are transferred during a reporting year, the EPA disagrees for the same reasons indicated above.

Comment 2: Commenters (0234-0299, 0234-0381, 0234-0382, 0234-0394, 0234-0402) opposed the implementation of a historic reporting representative in the subpart W proposed rule. Some commenters suggested that a historic reporting representative was unnecessary as owners and operators should only be responsible for emissions that occurred during their time of ownership or operation, although one commenter stated that the historic reporting representative was preferable to placing the responsibility for historic reporting on the new owner or operator. Some commenters stated that there is no certainty that a historic reporting representative would have access to the data and information needed to accurately respond to questions regarding prior year reports. Commenters (0234-0299) suggested that in place of a historic reporting representative, the EPA implement a data freeze after one year from the original submittal date of a report.

Commenters (0234-0398, 0234-0402) stated in comment to the subpart W proposed rule that a new owner or operator should not be responsible for correcting or resubmitting reports that were submitted and certified prior to their acquisition of a facility.

Commenter (0234-0394) supported the proposed use of a contractually determined reporting representative but asserted that some transactions may be too complicated to fit within the four categories of transactions that were proposed.

Response 2: Please refer to section II.A. of the preamble to the final rule and Response 1 in this section of the response to comment document for the EPA's responses. . In this final rulemaking, the EPA determined that the appointment of a historic reporting representative is reasonable and the best way to ensure the appropriate owner(s) or operator(s) continue to be responsible for

GHGRP reporting for the reporting year prior to the transaction and other appropriate years, consistent with the responsibility for the WEC filings. *e.g.*

17.6 Subpart C

Comment 1: Commenters (0276, 0287) asserted that inclusion of fuel combustion emissions in the WEC facility emissions is inappropriate because methane emissions from fuel combustion are not waste emissions. Commenter 0276 stated that the EPA should exclude stationary fuel combustion emissions reported under subpart W that could otherwise be reported under subpart C. The commenter stated there is not any technical difference or legal reason for the inconsistency between which industry segments report combustion emissions under subpart C and subpart W.

Commenter 0287 stated that Congress expressed clear intention to distinguish between emissions resulting from waste and those resulting from beneficial use, as reflected in CAA section 136(a) and 136(c). The commenter stated that revising subpart W to move all combustion emissions to subpart C is consistent with the direction to revise subpart W in section 136(h) to ensure that it will include accurate empirical data that will clearly distinguish between total emissions and waste emissions.

Commenter 0275 resubmitted comments originally submitted to the August 2023 proposed subpart W rule (88 FR 50282, August 1, 2023) that opposed the EPA's proposal to not amend existing reporting requirements for subpart W industry segments that report combustion emissions to subpart C.

Response 1: Comments regarding the subpart of the GHGRP under which combustion emissions are reported are outside of the scope of this rulemaking. Refer to section III.S.3. of the preamble to the final rule "Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems" (89 FR 42062, published May 14, 2024) for explanation regarding why the EPA did not amend existing provisions that specify the subparts under which combustion emissions are reported.

Regarding comment asserting that CAA section 136 distinguishes between waste emissions and emissions from beneficial use, refer to response 1 in section 1.3 of this response to comment document. As noted in that response, when the CAA section 136 provisions related to the Waste Emissions Charge are reviewed in full, it is clear that the term “waste emissions” refers to the amount of total methane emissions from a facility that exceed the thresholds specified at CAA section 136(f) from a facility meeting the applicability criteria of CAA sections 136(c) and (d). Congress made clear reference to methane emissions in stating the emissions subject to charge and did not include an exclusion or provide direction to exclude some portion of methane emissions that are reported to subpart W.

With respect to comment that the EPA should exclude combustion emissions reported under subpart W for purposes of the WEC program, without amendment to reporting requirements under subparts C or W, the EPA disagrees. Section 136(e)(1) of the CAA bases the charge

amount under the WEC on "the number of metric tons of methane emissions reported pursuant to subpart W of part 98." Congress was aware that for certain industry segments combustion emissions were reported under subpart W at the time they promulgated that statutory language and established industry specific thresholds for the WEC. Stationary and portable combustion sources in onshore petroleum and natural gas production, onshore natural gas gathering and boosting (G&B), and natural gas distribution have been required to be reported under subpart W since reporting began for each of these segments (in RY 2011 for onshore production and distribution, and RY 2016 for gathering and boosting) and Congress did not include language in CAA section 136 directing the EPA to exclude combustion emissions that were reported under then-existing subpart W. The commenter's suggested implementation would run contrary to the clear language of the statute in CAA section 136. In response to this comment, we also note, without reopening the part 98 subpart W provisions, that combustion emissions are a substantial portion of emissions reported for these segments (in 2022, combustion emissions were 79 percent of total emissions reported by facilities in the gathering and boosting segment under subpart W and 47 percent of total emissions reported by facilities in the onshore production segment[30]).

In response to this comment, we also note some historical background of the GHGRP, without reopening the part 98 subpart W or subpart C provisions. In the GHGRP rulemakings establishing those subparts and the reporting of industry segments within subpart W, there are some distinct differences to reporting under subpart W and subpart C that were developed in consideration of the contribution of emissions relative to the reporting burden from combustion units at oil and gas facilities, and which have remained unaltered since those initial rulemakings. Subpart W requires reporting of portable combustion emissions, which are not reported under subpart C as subpart C only requires reporting of stationary combustion equipment. At the time of the 2010 Final Rule that added subpart W (75 FR 74458, November 30, 2010), combustion emissions from portable equipment were estimated to be ~45percent of total emissions for the segment (75 FR 74469) and determined to be an important source of emissions. We received comment on the proposal to the 2010 Final Rule that the subpart C requirements (for stationary combustion) were too burdensome for onshore production and that having different facility definitions for subpart C and subpart W for this industry segment and reporting under both subparts would make reporting unwieldy. Commenters also suggested that reporting of emissions from small external combustion units would be too burdensome. In response to comments on that 2010 rule, combustion emissions for that industry segment were all included under subpart W (rather than being split between subpart C and subpart W) and the requirements for reporting under subpart W in that 2010 Final Rule included an exemption from calculating and reporting emissions from small external combustion units (an exemption that does not exist in subpart C). In section 136(h) of the CAA, the EPA was directed to revise subpart W to "accurately reflect the total methane emissions and waste emission from applicable facilities". The EPA also notes that in response to this direction, the 2024 Final Subpart W Rule revised subpart W to more

[30] EPA Greenhouse Gas Reporting Program (GHGRP) Envirofacts. Subpart W: Petroleum and Natural Gas Systems. Available online at: https://enviro.epa.gov/facts/ghg/search.html.

accurately reflect methane emissions from combustion sources by more accurately accounting for methane slip. During the development of the 2024 Final Subpart W Rule, the EPA sought comment on moving all combustion emissions associated with oil and natural gas systems to subpart W (88 FR 50358, August 1, 2023). In the 2024 Final Rule, the EPA decided to not take final action on these revisions. In response to this comment, without reopening the subpart W final rule, we note that combustion emissions are also a substantial portion of reported emissions for all petroleum and natural gas segments that report combustion emissions under subpart C (ranging from 66 percent to 96 percent of total emissions reported by facilities in each segment in 2022[31]).

In sum, removing these emissions from subpart W is outside the scope of this rulemaking and removing these emissions from the WEC would be contrary to the clear intent of the statutory language in CAA section 136. percentpercent

Comment 2: Commenter 0290 agreed with the proposed implementation of defining a "WEC applicable facility" based upon emissions reported under subpart W, noted that this would exclude combustion emissions for transmission compressor stations and underground storage facilities because those emissions are reported pursuant to subpart C, and noted this implementation results in some facilities that reported under the GHGRP to not meet the emissions threshold required to be a WEC applicable facility.

Response 2: The EPA acknowledges the commenter's support for basing the definition of a "WEC applicable facility" on the emissions reported under subpart W.

17.7 Subpart W Amendments

Comment 1: Commenters (0141, 0165, 0184, 0187, 0189, 0196, 0197, 0203, 0205, 0212, 0220, 0225, 0227, 0235, 0237, 0240, 0273, 0276, 0267, 0269, 0273, 0278, 0291, 0292, 0294, 0297, 0300, 0301, 0530, 0866, 0897, 0903, 0904, 0936, 0937) provided comment on the proposed revisions to subpart W and/or whether proposed or amended emission quantification methodologies accurately reflected methane emissions.

Commenter 0141 provided the following specific recommendations:

- Mandatory natural gas input and output flow (volume and weight) for every facility from well to end use.
- Mandatory reporting within 72 hours of all venting, flaring and blowdown events from all facilities in the natural gas supply chain across all segments, from well to end use. Reporting must include methane emissions, HAPs emissions and the duration of the event. All emissions from the event must be added into the annual emissions.
- Mandatory wireless emissions monitoring devices installed for all wells not in operation currently producing hydraulic fractured shale output. Wireless monitoring should detect both pressure monitoring and methane emissions.

[31] ibid.

- Project management metrics for facilities receiving funding under CAA section 136(a) including:

  o Project funding amounts, fund burn rate and project status delivery.

  o Monthly methane Emissions from targeted facilities

  o Targeted methane emissions accuracy (on track, will not meet, will reduce additional methane emissions).

  o Facility owner's investment into targeted facilities including employee headcount and technical modernization of facilities.

  o Count of all other facilities that owner owns which equal the methane waste emissions and amount of dollars owner is investing on a monthly basis towards mitigating methane waste emissions for those facilities.

- Monthly emissions reporting
- Reporting and WEC intensity thresholds of 100 tons of methane and 100 tons of carbon dioxide.

Commenters (0187, 0205, 0269, 0276, 0866, 0903, 0904, 0936) recommended creation of an alternative reporting pathway that enables operators to use comprehensive advanced methane measurement technologies to demonstrate emissions at WEC applicable facilities. Commenters (0205, 0904) suggested that the EPA should use the technology-approval framework proposed in NSPS OOOOb/EG OOOOc for emissions reporting under subpart W, and commenter 0904 recommended that the EPA collaborate with states that recognize use of advanced measurement technologies. Commenter 0269 stated that it is important that operators can present verifiable data from reliable sources like satellites. Commenter 0530 stated that satellite or flyover data would be helpful to corroborate estimates of emissions leaks. Commenter 0903 stated that the EPA failed to fully analyze whether there are advanced methane measurement technologies that could meet its criteria for quantification accuracy, such as continuous emissions monitoring. Commenters (0273, 0903) stated that providing an alternative reporting pathway would be consistent with the Congressional intent of CAA section 136(h).

Commenters (0189, 0235) stated that the EPA has not provided a proper assessment and understanding of emission factors and that they are concerned that the factors will be too aggressive and not based on empirical data.

Commenter 0196 requested that empirical data be used on every portion of WEC obligations. The commenter noted that many smaller companies are forced to use the EPA's equipment count and device emission factors and that without empirical data, the outdated emission factors result in higher WEC obligations for each operator. The commenter asserted that compressor methane slip factors are one example that may result in too high of emission estimates depending upon

operating conditions.

Commenter 0197 stated that the EPA must account for unique characteristics of marginal wells as failure to do so could result in grossly inaccurate emissions estimates and unfair punitive measures.

Commenters (0196, 0212, 0297, 0300) stated that the EPA failed to properly assess emissions factors that become the emissions basis. The commenters also stated that for the Gathering and Boosting industry segment, emissions are based upon mileage of pipe and not actual emissions, and therefore do not reflect control measures that could show dramatically different emissions profiles. Commenter 0196 stated that the EPA factors are higher for non-cathodically protected pipelines, that above ground pipelines cannot be cathodically protected, and that the definition of "protection" should be expanded to included coated pipe as well as other types of protection beyond bare steel. The commenters also criticized the EPA's evaluation of the Zimmerle, Pasci, and Rutherford studies.

Commenter 0203 suggested that the EPA expand the scope and frequency of monitoring and reporting, including consideration of advanced technologies for real-time emissions tracking. As support for their recommendation, the commenter cited a study by Lu et al. (2023) which presents a comprehensive observation-derived analysis of methane emissions from U.S. oil and gas fields between 2010 and 2019, using high-resolution inversion of atmospheric methane observations. The commenter stated that the analysis found that U.S. methane emissions were significantly underestimated, with an average annual emission 70 percent higher than reported by the EPA. The commenter stated that the study highlights a trend where, despite an overall increase in oil and gas production, methane emission intensity showed a steady decline from 3.7 percent in 2010 to 2.5 percent in 2019. The commenter stated that this reduction in methane intensity suggests that efforts to minimize emissions can be effective and should be further encouraged through regulatory frameworks like the proposed rule. The commenter additionally cited a report titled “Updated global fuel exploitation inventory (GFEI) for methane emissions from the oil, gas, and coal sectors” which the commenter stated emphasizes the importance of accurate methane emission accounting and the potential environmental benefits of reducing such emissions.

Commenter 0220 stated that the revised emission factors in the subpart W proposal makes broad assumptions about oil and gas operations and technologies that will lead to inaccurate reporting for many owners and operators.

Commenter 0225 recommended that the EPA ensure that emissions reports upon which the charge is assessed are not manipulated and are based on empirical, unbiased data.

Commenters (0227, 0936) asserted that the Outer Continental Shelf (OCS) Emissions Inventory significantly undercounts methane emissions from offshore oil and gas operations and stated that to fulfill the Agency’s mandate under the IRA the EPA must end its reliance on the Bureau of Ocean Energy Management’s (BOEM) OCS Emissions Inventory.

Commenter 0237 stated that the EPA should conduct a comprehensive study to develop new emission factors and delay the implementation of WEC at least a year or two so that data can be acquired. The commenter stated that although the EPA allows for empirical data to be used instead, the EPA's estimates of cost and time to acquire, deploy, and ensure accurate testing are underestimated and that the availability and supply chains of necessary equipment or technology are challenges.

Commenter 0240 stated that proposed revisions were not based upon best available data and would drastically increase reported emissions.

Commenter 0273 stressed the importance of addressing gaps in subpart W where there are additional opportunities to allow for the use of empirical data and specifically noted pneumatic controllers.

Commenter 0276 provided specific comment on combustion efficiencies estimated for flares and enclosed combustion devices.

Commenter 0278 resubmitted comments previously submitted to the subpart W rulemaking.

Commenter 0237 stated that an emission factor based upon miles of pipeline in service disincentivizes monitoring for leaks because it removes the economic benefit to do so. Commenter 0291 stated that MERP fees should not be calculated using arbitrary emissions factors based on metrics like “miles of gathering pipeline” for operators who have facility-based measurements that more accurately assess actual leaks, unrealistic assumptions like constant operation of pneumatic devices, or treating all compressors as having the same degree of methane slip when operators have data showing their actual facilities are performing better.

Commenter 0292 expressed support for the proposed subpart W amendments and stated that utilizing precise and comprehensive, all-encompassing data for the waste emissions charge is essential to the success of the program.

Commenter 0294 emphasized the importance of oversight and verification protocols, particularly with respect to methane super-emitting events. The commenter recommended that the EPA study the Colorado Department of Public Health and Environment’s Air Pollution Control Division Methane Intensity Verification Rule, including the use of basin-level data to identify possible underreporting of emissions.

Commenter 0301 noted recommendations from the EPA’s Scientific Advisory Board (SAB) with respect to the proposed Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems (dated February 6, 2024) and stated that they shared the SAB’s concern that applicable facilities, as defined in the proposed draft rule in section 99.2, will systematically underreport CH_4 emissions to the Greenhouse Gas Reporting

Program, both with respect to persistent leakage and large-event emissions. The commenter stated that this will mean that many such facilities with substantial methane emissions will not report on the (possibly mistaken) ground that they fall underneath statutorily specified waste emissions thresholds. That, in turn, will result in WEC obligations attaching to far fewer facilities; correspondingly, their owners or operators will be presented with far weaker incentives to invest in mitigation efforts.

Commenter 0897 stated that there are no provisions made to safeguard the accuracy of methane emissions measurements in the proposed rule and suggested imposing requirements on the age and location of measuring devices to enhance the fairness of the proposal.

Commenter 0937 suggested that the EPA adopt the January 17, 2024, recommendations of the Scientific Advisory Board (SAB) to more fully account for methane emissions from oil and gas facilities.

Response 1: The EPA acknowledges these comments and reiterates that amendments to subpart W of the GHGRP are out of scope for this final rule and were addressed through a separate rulemaking. The recent subpart W amendments were addressed in the proposed rulemaking Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems (2023 subpart W Proposal) published on August 1, 2023 (88 FR 50282) and in the associated final rulemaking (2024 Subpart W Final Rule) published on May 14, 2024 (89 FR 42062). Comments related to the subpart W rulemaking are outside the scope of this rulemaking concerning implementation of the WEC program.

The EPA notes without reopening that to the extent that commenters provided similar comments on the proposed subpart W amendments, these comments and the EPA's responses are available in "Summary of Public Comments and Responses for 2024 Final Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems under the Greenhouse Gas Reporting Rule" available at https://www.regulations.gov/document/EPA-HQ-OAR-2023-0234-0456.

Comment 2: Commenter 0287 stated that revisions are needed to subpart W throughput reporting requirements for the gathering and boosting industry segment. The commenter stated that the term "downstream endpoint" in the proposed amendments to subpart W was too narrow because gas is sometimes returned to upstream producers for various uses and that it is necessary for reporters to be able to account for gas that flows through multiple compressor stations in series within the same basin.

The commenter proposed the following changes to language under the proposed subpart W amendments:

98.236(aa)(10)(ii) The quantity of natural gas transported through the facility to a downstream endpoint or to another industry segment 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 site or facility in the calendar year, in thousand standard cubic feet.

98.236(aa)(10)(iv) The quantity of all hydrocarbon liquids transported to a downstream endpoint or to another industry segment 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 site or facility in the calendar year, in barrels.

Response 2: Comments regarding amendments to subpart W reported throughputs are outside of the scope of this WEC rulemaking. However, the EPA notes without reopening that for the reasons explained in the preamble to the final subpart W amendments rule the finalized requirements, effective January 1, 2025 and required beginning with reporting year 2025 reports, for 98.236(aa)(10)(ii) and (iv) are as follows:

(ii) The quantity of natural gas transported from the gathering and boosting facility in the calendar year, in thousand standard cubic feet.

(iv) The quantity of all hydrocarbon liquids transported from the gathering and boosting facility in the calendar year, in barrels.

Comment 3: Commenters (0193, 0283, 0288) stated that the WEC Proposed Rule must be considered together with proposed revisions to subpart W in a joint rulemaking process, that conducting the subpart W and WEC implementation rulemakings on two separate tracks without reference to one another is not authorized by the statute and is otherwise irrational, and that the EPA instead should fuse the two rulemakings into one action to include allowing for a supplemental comment period in which the public may finally comment on the ways in which these two integrally related proposals interact with one another.

Commenters (0193, 0238, 0268, 0271, 0283, 0284, 0285, 0298, 0299, 0905) asserted that without the benefit of a unified comment process, affected parties had no meaningful opportunity to comment on the impact of subpart W changes as that impact relates to the financial burden being placed upon such parties under WEC. Commenter 0285 suggested that the EPA should put the WEC proposed rule on hold until the subpart W amendments are finalized. Commenter 0299 stated that this process violated the CAA's procedural requirements of fair notice and due process, and that the decision to pursue separate rulemaking on rules so closely tied makes so little sense as to be arbitrary and capricious. Commenter 0271 specifically stated that they were unable to assess Equation B-6 of the proposed rule without final publication of subpart W.

Commenter 0283 stated that in the subpart W proposal, the EPA provided no rational explanation, statement of law or policy, nor any interpretation of CAA section 136 for treating the two rulemakings as separate matters. Commenter 0298 stated that the failure to synchronize overlapping proposals for the WEC program, revisions to subpart W, and the NSPS/EG rulemakings violate the CAA by being arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

Commenter 0283 stated that the text and structure of CAA section 136(h) directs the EPA to revise subpart W for two reasons, and two reasons only:

1. to ensure that reporting under that subpart is based on empirical data, accurately reflects total emissions from applicable facilities, and allows owners and operators of applicable facilities to submit empirical emissions data, and
2. to ensure that the calculation of charges under the WEC program provisions elsewhere in CAA section 136 is also based on empirical data, accurately reflects total emissions from applicable facilities, and allows owners and operators of applicable facilities to submit empirical emissions data.

Commenter 0283 asserted that these two directives of subsection (h) to the EPA are not independent from each other and that neither the subpart W or WEC proposals offer any interpretation of this language and that the EPA made an implicit assumption that they are independent goals that the EPA is free to pursue them siloed off from one another, in a sequence and timing of its choosing.

Response 3: The EPA disagrees with the commenters' positions that the subpart W and WEC rulemakings must be combined, that comments to the subpart W rulemaking must be considered under this rulemaking, and that subpart W revisions should be reproposed after the WEC rulemaking or otherwise promulgated as a single action with supplemental comment period. The EPA recognizes that subpart W and the WEC are related in that, as required by Congress, the data reported under subpart W (*e.g.*, emissions and hydrocarbon throughput) are inputs into the WEC calculations, and that Congress additionally required the EPA to revise subpart W consistent with the directives in CAA section 136(h). The EPA in this final rule is finalizing provisions that require the use of the subpart W data under the WEC as required by Congress, and in a separate rulemaking has additionally revised subpart W consistent with the directives and before the deadline specified in CAA section 136(h). Regarding the latter, without reopening, in the 2024 subpart W rulemaking, the EPA finalized revisions to ensure reporting is based on empirical data under subpart W and to ensure reported emissions accurately reflect total facility methane emissions. However, while the subpart W requirements for reporting result in data that will be used in calculation of the WEC, revising subpart W consistent with CAA section 136(h) is separate from the EPA taking action on implementation of the WEC. Congress did not require that the WEC be implemented through the same rulemaking as the revisions Congress required under CAA section 136(h), and commenters did not provide any supporting rationale that Congress did require such a process under CAA section 136. The EPA therefore believes it was reasonable and appropriate to address the subpart W revisions and WEC through two separate rulemakings, including after taking into consideration the statutory deadline provided in CAA section 136(h) for the subpart W rulemaking revisions. The EPA also notes that stakeholders were provided the opportunity to submit any applicable comments to the docket for the WEC proposal for consideration in the development of the final WEC rule. The EPA notes that the EPA carefully considered this issue and in the limited circumstance where the EPA determined upon review that aspects of the 2023 Subpart W Proposal were closely tied to WEC implementation (see, *e.g.*, section III.A.1.b. of the preamble to the 2024 Subpart W Final Rule), the EPA did not take final action at that time and have instead done so under this final rule. Refer to section II.A.5. of the final preamble.

Regarding the specific claim that commenters were unable to assess Equation B-6 of the

proposed WEC rule without final publication of subpart W, the EPA disagrees. Equation B-6 specifies the calculation of the quantity of methane emissions that are equal to, below, or exceeding the waste emissions threshold for a WEC applicable facility prior to consideration of any applicable exemptions in order to implement CAA section 136(f). Although data from subpart W serves as both direct and indirect inputs to this equation, the appropriateness and structure of the equation provided adequate notice to be commented on without knowing the specific estimated values of these inputs for a facility.

Comment 4: Commenters (0195, 0206, 0238, 0270, 0271, 0293, 0936) recommended that the proposed WEC rule be delayed until reporting year 2025 or be put on hold until the subpart W amendments are final. Commenter 0238 suggested that the EPA should have considered the heavy resource strain that state regulatory agencies and the regulatory community face and instead enact a more thoughtful and reasonable promulgation timeline of proposed rules.

Commenters (0150, 0185, 0194, 0273, 0281, 0283, 0284, 0288) recommended that the EPA not impose and collect WEC charges with respect to emissions reported for calendar year 2024. Commenters (0150, 0281, 0283) stated that if the EPA does so, that the date for the first submission of WEC charges to the EPA be set in March 2026 at the earliest. As a further alternative, commenter 0283 suggested that the text of proposed section 99.7(e)(1) be revised to allow WEC obligated parties, at their option, to submit revised WEC filings with respect to emissions in calendar year 2024 based upon more accurate and empirically measured data obtained after the EPA has finalized and fully implemented the Agency's proposed revisions to subpart W. Commenter 0273 provided similar suggestion. Commenters (0221, 0273) recommended that more time be provided to affected facilities for reporting in 2025.

Commenter 0299 stated that the failure to revise the subpart W reporting requirements in time for the 2024 collection year violates section 136 and renders the proposed WEC rule unworkable. Quoting from *Mock v. Garland,* 75 F.4th 563, 584 (5th Cir. 2023), the commenter stated that when a "Proposed Rule [is] so unworkable that the entire procedure need[s] to be replaced," an agency must "start the notice-and-comment process again and receive public comments on the new" procedure. The commenter stated that at the least the EPA should delay imposing the first charges to the 2025 calendar year, when subpart W revisions presumably take effect, or allow regulated parties to submit revised methane fee filings with respect to calendar year 2024 once the subpart W revisions have been fully implemented.

Commenter 0281 stated that CAA section 136(g) requires that "[t]he charge under subsection (c) [*i.e.,* the WEC] shall be imposed and collected beginning with respect to emissions reported for calendar year 2024 and for each year thereafter." However, the statute does not state in which year WEC charges must be collected. Commenter stated the statute only directs the EPA on which year (2024) the Agency must evaluate calculated emissions to begin imposing WEC charges. The commenter stated that the EPA is directed to revise subpart W no later than August 2024 (two years from the passage of the Inflation Reduction Act), but it [IRA] did not provide the EPA with any deadline to begin imposing and collecting the WEC charge.

Commenter 0281 stated that the EPA will either violate CAA section 136(g) which requires an emissions charge based on 2024 emissions or it [the EPA] will violate CAA section 136(h) which requires that the WEC be assessed based on empirical data. The commenter asserted that this choice is due to the EPA's delay in putting forward proposed subpart W in a timely manner and suggested that the EPA should not make operators bear the cost of regulatory inaction. Commenter 0284 expressed a similar position.

Commenter 0272 requested that once the subpart W revisions are finalized, reporters be allowed the option to implement methodologies in the revised rule for the 2024 report. The commenter stated that this may not be feasible for all sources because some of them may require upfront capital and resource investment; however, it may be possible in other instances, *e.g.*, the ability to inspect pneumatic controllers and use a leak/non-leak factor rather than the same generic factor for all controllers. The commenter stated that they believe that early implementation where feasible will improve the accuracy of the methane inventory, which is the basis of IRA.

Commenter 0283 stated that the first year 2024 WEC calculations will be based in part or in whole on the 2024 subpart W requirements, which are outdated and less accurate than the methodologies contained in the proposed modifications to the subpart W requirements which Congress directed the EPA to be finalized by August 2024 and which are expected to be implemented in full for emissions to be reported for calendar year 2025. The commenter stated that this is contrary to the stated requirement of Congress in CAA section 136(h).

Response 4: The EPA disagrees with the suggestion from some commenters that implementation of the WEC be delayed until 2025 or put on hold until the subpart W amendments are in effect. Section 136(g) of the CAA directs that the waste emissions charge shall be imposed and collected beginning with respect to emissions reported for calendar year 2024 and for each year thereafter. Further, CAA sections 136(c) and (e) direct that the charge shall be based upon emissions reported pursuant to subpart W. The only logical interpretation to be drawn from these directives is that the first year of administration of WEC must be based upon methane emissions occurring during calendar year 2024 based upon data reported pursuant to subpart W by March 31, 2025.

The EPA disagrees with comment that CAA section 136 required that amendments to subpart W be finalized prior to 2024 or that the proposed WEC rule is unworkable as a result of the date of finalizing of the subpart W amendments. CAA section 136(h) mandated that the EPA revise subpart W within 2 years after the date of enactment of the section, *i.e.* by August 16, 2024, consistent with the directives in CAA section 136(h). Given that Congress provided the EPA 2 years from the date of enactment to complete amendments to subpart W and in the same legislation specified at CAA section 136(g) that imposition and collection of charge begin with emissions reported for calendar year 2024, it is clear that Congress contemplated that the WEC may take effect based upon then-existing subpart W requirements. Thus, such an approach under

this final rule is not unworkable and the EPA provided appropriate and meaningful notice and comment process in this rulemaking.

The EPA disagrees with commenters contending that the EPA will violate either CAA section 136(g) or section 136(h). As discussed above, CAA section 136(g) directs that the WEC program be implemented beginning with calendar year 2024 emissions. CAA section 136(h) directs that no later than 2 years after the date of enactment of CAA section 136, the Administrator shall revise the requirements of subpart W. The 2024 Subpart W Final Rule was published on May 14, 2024, within two years of the date of enactment of CAA section 136.

The EPA notes that in the 2024 Subpart W Final Rule, the EPA included amendments for RY 2024 for optional additional calculation methods and other provisions that allow owners and operators of applicable facilities to submit empirical emissions data. See section IV.B. of the preamble to that final rule (89 FR 42062, May 14, 2024). The amendments discussed in that section may be reflected in the RY2024 report if elected by the reporter, and thus to the extent commenters argue that such options are required by CAA section 136(h), or that the EPA must allow regulated parties to submit revised methane fee filings with respect to calendar year 2024 once the subpart W revisions have been fully implemented, those comments are also addressed as appropriate.

Comment 5: Commenter 0283 stated that certain subpart W current and proposed emission factors, including for pneumatic devices, are inaccurate and overstate emissions. As such, the commenter asserted that it is not a sufficient solution to allow parties to avail themselves of revised emissions factors for reporting year 2024. The commenter proposed allowing reporters to take into account empirical studies and data collection, even if not fully compliant with the final subpart W rule.

In the event of overpayment of WEC due to overestimated emissions calculated under a prior version of subpart W's requirements, the commenter stated that the EPA should issue refunds to the applicable WEC obligated party in the amount of the overpayment pursuant to proposed section 99.8(d)(1). The commenter stated that such a refund could be calculated by applying or extrapolating the 2025 data to the excess 2024 WEC payment due to that payment being based on inaccurate data due to the EPA's failure to revise subpart W in a timely fashion and coordinated with its implementation of the WEC program.

Response 5: Refer to response 4 in this response to comment section for response regarding the availability of optional additional calculation methods and other provisions that allow owners and operators of applicable facilities to submit empirical emissions data, consistent with CAA section 136(h), beginning with reporting year 2024 reports.

Regarding the request that refunds be provided for "overestimated" emissions in subsequent reporting years, the EPA disagrees. The best reading of the statutory text of CAA section 136(e) establishes that the charge amount "shall be equal to… the number of metric tons of methane

emissions reported pursuant to subpart W of part 98… during the previous reporting period." Thus, the commenter's suggestion to extrapolate reported emissions data for one reporting period to determine the charge amount for another reporting period runs contrary to the clear statutory text of CAA section 136.

The WEC obligation is calculated for each reporting year. As stated in section 99.8(d)(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. As discussed in section III.A.4. of the preamble to this final rule, the EPA is finalizing that data resubmissions (initiated by facilities) for the previous reporting year would be required to be submitted by December 15 in order to be considered for WEC recalculations, with the exception 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, the EPA will authorize a refund to the WEC obligated party equal to the difference in WEC obligation.

Comment 6: Commenters (0214, 0237, 0291, 0299) stated that amendments to the GHGRP, including revision of the global warming potential of methane and increasing emission factors in subpart W, have the effect of lowering the emission threshold for facilities subject to the WEC. Commenter 0214 asserted that the simplest way for the EPA to adhere to Congressional intent of the IRA is to reflect that directive through appropriate requirements in its Greenhouse Gas Reporting Program.

Commenter 0287 stated that the waste emissions thresholds established by Congress at CAA section 136(f) could only be based on data that existed at the time the IRA was developed, including stationary combustion methane emissions that were vastly undercounted in existing datasets. The commenter stated that in responding to the congressional mandate at CAA section 136(h) to revise subpart W to ensure that the reporting and calculation of charges are based on empirical data, the EPA must also recognize it is potentially moving the goalposts that Congress set with the thresholds by adding sources to subpart W and significantly increasing the emissions reported by sources that are currently reported under subpart W.

Commenter 0299 stated that when Congress enacted Section 136 it required the "carbon dioxide equivalent" of methane to be computed under the subpart W guidelines, which at the time was 25, not 28. The commenter stated that the meaning of the statute is fixed at the time of enactment, so the EPA cannot change the "carbon dioxide equivalent" value to increase the number of facilities subject to a tax. The commenter asserted that the global warming potential depends on arbitrary modeling choices about timescales and is highly subject to manipulation. The commenter further stated that because the EPA is required to follow Intergovernmental Panel on Climate Change (IPCC) guidelines when updating its reporting rules, if Congress did indeed require the EPA to follow updated IPCC values, then it has delegated authority to a foreign agency to decide who gets taxed and who doesn't, which the commenter stated would violate the private nondelegation doctrine, the appointments clause, and the Treaty Clause.

Response 6: The EPA disagrees with commenters that the EPA has moved the goalposts or otherwise misapplied congressional directive with the final amendments to subpart W or the implementation of the WEC program. The best reading of the statutory text language of CAA section 136(h), in part, directs the EPA to revise requirements under subpart W to "accurately reflect the total methane emissions and waste emissions from the applicable facilities" and further directs that for implementation of the WEC program the waste emissions thresholds established at CAA section 136(f) are used. The EPA rejects the commenter's suggestion that the EPA interpret these as unrelated directives, or otherwise implement the WEC program in a manner that disregards the amendments to subpart W pursuant to CAA section 136(h).

Updates to applicable global warming potential (GWP) values at Table A–1 to subpart A of part 98 were finalized as part of the "Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule" final rule on April 25, 2024 (89 FR 31802) and are outside the scope of this rulemaking. The EPA has previously addressed comments concerning these updates in the response to comment document associated with that final rule.

The EPA finds no indication in the text of CAA section 136 mandating a specific global warming potential value for purposes of implementation of the Waste Emissions Charge. Further, the EPA disagrees with the assertion that authority to set the GWP values specified at Table A–1 to subpart A of part 98 has been delegated to the IPCC. Table A-1 to subpart A of part 98, and all updates, have been promulgated as part of notice-and-comment rulemaking.

Comment 7: Commenters (0274, 0278, 0298) stressed the importance of harmonization of the final Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (Final Methane Rule), and the proposed Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems (subpart W proposed rule), with the proposed WEC rule.

Response 7: The EPA agrees with commenters regarding the general need to align requirements between the NSPS OOOOb/EG OOOOc rules, subpart W of the GHGRP, and the final WEC rule to the extent such alignment is appropriate and consistent with the statutory provisions. See section I.C.2. of the preamble to this final rule for discussion of the relationship between these programs. Specific comments raised by commenters regarding alignment between the proposed WEC rule and these other rules are addressed in sections 17.4 through 17.8 of this response to comment document. Regarding alignment between subpart W of the GHGRP and the NSPS OOOOb/EG OOOOc rules, without reopening, the EPA refers readers to section I.F. of the preamble to the 2024 Subpart W Final Rule and section 28.4 of the response to comment for that rule.

Comment 8: Commenter 0287 stated that the EPA's authority under section 114 is now defined and constrained by section 136. The commenter stated that based upon 89 FR 5323, it appears that the EPA acknowledges that section 136 now affects its authority under section 114 to collect GHG-related data. The commenter stated that section 136 should be interpreted as defining the

EPA's authority under section 114 to collect data related to GHGs only as necessary to implement the EPA's section 136 authorities.

The commenter stated that when specific statutory provisions govern an issue, they should be deemed controlling and the limitations of those specific provisions should not be subsumed into more general authorities, citing to *Brown v. Gen. Servs. Admin.*, 425 U.S. 820, 834 (1976) ("[A] precisely drawn, detailed statute pre-empts more general remedies.") and asserted that such a statutory provision now applies to GHG reporting for the oil and gas industry. The commenter noted that section 136(h) directs the EPA to revise subpart W "to ensure the reporting under such subpart, and calculation of charges under subsections (e) and (f) of this section, are based on empirical data, including data collected pursuant to subsection (a)(4), accurately reflect the total methane emissions and waste emissions from the applicable facilities, and 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." The commenter interpreted this provision as Congress calling for reforming subpart W to accomplish two goals: to ensure reported data is empirical and accurate and to allow a demonstration of the extent to which a charge is owed under the WEC and stated that any information collected under the GHGRP that is not relevant to section 136 should be considered beyond the scope of the EPA's authority.

The commenter stated that collecting information beyond (1) emissions and (2) inputs to equations to verify emissions should be struck from subpart W. The commenter noted that in the proposed subpart W rulemaking, the EPA proposed to collect "estimated" information related to sources of flaring (at 98.236(n)(10) and (19)) as well as pieces of information that are neither emission data or inputs to equations for the reporting requirements for Other Large Release Events (at 98.236(y)).

Response 8: Comments regarding the EPA's authority to collect information under subpart W of the GHGRP and the collection of information claimed by the commenter to be non-emission and non-inputs to equations are out of scope for this rulemaking. The EPA notes without reopening that similar comments were responded to as part of the response to comment in the 2024 Subpart W Final Rule.[32]

Comment 9: Commenter 0229, paraphrasing from *United States v. Ho*, 984 F.3d 191, 201 (2d Cir. 2020), stated that, "[t]he reference canon" explains that "a statute's reference to a general subject indicates dynamic meaning as it exists whenever a question under the statute arises, while a statute's reference to another statute by specific title or section takes the statute as it exists at the time of adoption, without any subsequent amendments unless by express intent." The commenter also provided quotation from *Jam v. Int'l Fin. Corp.*, 586 U.S. 199, 209-10(2019), in stating that, ""a statute that refers to another statute"—or in this case, a regulation—

[32] See section 27 of the "Summary of Public Comments and Responses for 2024 Final Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems under the Greenhouse Gas Reporting Rule" accessible at https://www.regulations.gov/document/EPA-HQ-OAR-2023-0234-0456

"by specific title or section number in effect cuts and pastes the referenced statute [or regulation] as it existed when the referring statute was enacted, without any subsequent amendments." The commenter stated that CAA section 136 refers to the specific subpart of the regulations to be incorporated, making it a specific (not a general) incorporation and that nothing in the statute expressly says that Congress intended to incorporate subsequent amendments to those regulations. Therefore, the commenter stated that section 136 has incorporated the definitions and calculations from subpart W as of the day that Section 136 was enacted, August 16, 2022. The commenter asserted that the EPA does not have the power to amend subpart W for purposes of the WEC program and that were it otherwise, serious constitutional concerns could arise, providing the following citations and excerpts:

- *Hernandez-Carrera v. Carlson*, 547 F.3d 1237, 1249 (10th Cir. 2008) ("[T]he canon of constitutional avoidance does constrain an agency's discretion to interpret statutory ambiguities, even when Chevron deference would otherwise be due.").
- "The nondelegation doctrine bars Congress from transferring its legislative power to another branch of Government." *Gundy v. United States*, 139 S.Ct. 2116, 2121 (2019). It says that Congress must be specific when it "confers decision-making authority upon agencies." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001).
- This requirement compels Congress to provide an agency with "an intelligible principle to which [the agency] authorized to [act] is directed to conform." *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 409 (1928). Without an intelligible principle, a grant of decision-making power is an "unconstitutionally standardless delegation." *Whitman*, 531 U.S. at 473.

The commenter stated that if the incorporated version of subpart W is not assumed to be the version as of August 16, 2022, then the IRA will have left the EPA free to craft calculation methodologies and even the statute's reach with no real direction from Congress. The commenter stated that this means that Congress would have "failed to articulate any policy or standard" by which to calculate emissions or define industry segments, quoting from *Mistretta v. United States*, 488 U.S. 361, 373 n.7 (1989). The commenter further stated that even if subpart W sufficiently cabined the EPA's discretion as to the Methane Tax now, nothing in section 136 would supply anything like the necessary "definite" standards to determine who the Methane Tax applies to and how to calculate it down the road, quoting from *Am. Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946).

Commenter 0229 stated that the Administrative Procedure Act "sets forth the procedures by which Federal agencies are accountable to the public and their actions subject to review by the courts", quoting from *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992) and "[i]t requires agencies to engage in reasoned decision-making", paraphrasing from *DHS v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1905 (2020), and then it directs courts to "set aside" any agency actions that are "arbitrary" or "capricious." (U.S.C. section 706(2)(A)). The commenter continued that the proposed rule's provisions would likely fail to meet the standards articulated in *Michigan v. EPA*, 576 U.S. 743, 758 (2015) and *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019). Further, the commenter stated that even though subsequent amendments to subpart

W should not be incorporated into Section 136 or its implementing regulations, the EPA has announced that it intends to do exactly that.

Commenter 0327 stated that the EPA should clarify that references to subpart W of the GHGRP in the proposed rule are to the current language located at those code sections. The commenter continued that this means that if the language at those sections were to change in the future through a regulatory revision or update, these WEC regulations will still refer back to the language that existed at the time of the codification of WEC regulations.

Response 9: The EPA disagrees with the commenter's assertion that the EPA lacks the authority to amend subpart W for purposes of the WEC program. In fact, the best reading of the statutory text of CAA section 136(h) unambiguously obligates the EPA to do so, directing that "the Administrator shall revise the requirements of subpart W of part 98 of title 40, Code of Federal Regulations, to ensure the reporting under such subpart, and calculation of charges under subsections (e) and (f) of this section, are based on empirical data, including data collected pursuant to subsection (a)(4), accurately reflect the total methane emissions and waste emissions from the applicable facilities, and 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." To interpret CAA section 136 as incorporating subpart W as of August 16, 2022 would impermissibly render CAA section 136(h) as surplusage.

The EPA disagrees with the commenter's assertion that if the incorporated version of subpart W is not the effective version of the text as it existed on August 16, 2022, that the IRA would have left the EPA without direction from Congress. As previously noted, CAA section 136(h) provides clear direction regarding the EPA's authority to revise subpart W for purposes of implementation of the WEC.

Comment 10: Commenter 0288 stated that the EPA needs to better define the industry segments and their applicability within subpart W, and specifically needs to provide clarity on:

1. if oil production that is commingled before a wellsite should be in the Production or Gathering & Boosting segment, and
2. if oil storage tanks for oil production that is commingled before a wellsite should be in the Production or Gathering & Boosting segment.

Response 10: These comments are outside the scope of this rulemaking. The applicable facility, owner and operator, and industry segment definitions related to the onshore production and gathering and boosting industry segments under subpart W are found at 40 CFR 98.230 and 98.238.

17.8 Other Regulatory Programs

Comment 1: Commenters (0903, 0905) suggested the EPA facilitate intra-agency coordination to ensure internal consistency and harmonization amongst other agencies. The commenters gave

some examples of opportunities for coordination including Treasury Section 45 V regulations, Department of Transportation Pipeline and Hazardous Materials Safety Administration (DOT/PHMSA) Rule, Department of Interior Bureau of Land Management (DOI/BLM) Waste Prevention Rule, Department of Energy (DOT) Argonne Greenhouse gases, Regulated Emissions, and Energy use in Technologies (GREET) model, DOE Differentiated Gas Framework, State Department/DOE International Measurement, Reporting, and Verification (MRV) standard, and State Department discussions on an European Union (EU) Import standard and global methane policy. Commenter 0903 suggested these rules could rely on the NSPS OOOOb and EG OOOOc Alternative Test Method approval program.

Response 1: The EPA acknowledges and appreciates the information shared by the commenters regarding the other methane-related rulemakings and activities. Regarding comment that the EPA work with other agencies to adopt the EPA's Alternative Test Method approval approach, the EPA notes that this request is outside the scope of this rulemaking.

Comment 2: Commenter 0275 expressed concern regarding the MERP funding model being in potential jeopardy if only three segments, Onshore Petroleum and Natural Gas Production, Onshore Petroleum and Natural Gas Gathering and Boosting, and Natural Gas Distribution become burdened with 100 percent of the waste emission charge fees. The commenter requested confirmation as to how the EPA was determining the impact to the overall subpart W methane inventory of an increase of between one and five percent to require combustion emissions from all oil and gas be reported through subpart W rather than subpart C. The commenter questioned whether shifting any methane emissions from the MERP reporting mechanism was in alignment with the 2030 Greenhouse Gas Pollution Reduction Target announced on April 22, 2021.

Response 2: The EPA notes the commenter's concerns regarding the combustion emissions reporting were previously raised and addressed during a separate rulemaking and therefore are out of scope with regard to the WEC rulemaking. Regarding the comment about the MERP funding, the EPA notes that this is also outside the scope of this rulemaking.

Comment 3: Commenter 0236 raised concern regarding the way the EPA and the DOE propose to distribute funds for mitigation and monitoring through intermediaries. The commenter expressed that using intermediaries rather than providing funding directly to Tribes or Tribal communities can impede distribution of those funds to those entities. The commenter urged the EPA to consider applicant intermediaries' experience working directly with Tribes, Tribal communities, or with other Tribal organizations. Without existing networks and relationships with whichever intermediaries are selected, Tribal communities will be at a distinct disadvantage with respect to non-Tribal communities to access funding. The commenter asked the EPA and the DOE to pay careful attention as it considers applications received under the Notice of Intent (NOI).

Response 3: The EPA acknowledges the concern raised by the commenter; however, how funding is distributed under the MERP program is out of scope with regard to the WEC rulemaking.

Comment 4: Commenter 0270 expressed experiencing comment fatigue and concern over providing meaningful comment due to being unable to evaluate impacts due to stacking of proposed rules that are related to one another including the Greenhouse Gas Reporting Proposed Rule, the Methane Rule and the BLM's proposed rule on methane waste prevention. The commenter recognized that Congress intended for the EPA to amend subpart W by August of 2024 and WEC charges are to apply to 2024 emissions, but the EPA has not timely finalized the amendments to subpart W. The commenter stated that the EPA has overfilled its plate of proposed regulations pertaining to the oil and natural gas industry without first responding to comments and finalizing, or withdrawing, some of the complementary regulations that it has proposed. The commenter stated regulatory certainty pertaining to other previously promulgated, complimentary rulemakings is crucial for evaluating impacts of later proposed rules and the EPA has not afforded commenters such certainty with the proposed WEC. The commenter believed the EPA has taken a rushed approach without sufficient input from state regulatory agencies during the initial proposed rule development process resulting in proposed rules, and a final Methane Rule, that are rife with unworkable implementation issues, including resource strains and technical infeasibilities within the regulations and timelines that cannot be realistically met. The commenter suggested that early and frequent meaningful engagement with stakeholders like state agencies could have remedied this. The commenter also pointed to the Super Emitter Program in the Methane Rule as a specific aspect of uncertainty with how it will function in relation to the WEC. The commenter stated the Super Emitter Program woefully lacks standardized measurement methodologies, therefore will result in superfluous charges to operators under WEC. The commenter requested the EPA provide a regulatory analysis of what the impacts would be and an opportunity for commenters to review and comment on that analysis before moving forward with the WEC rule.

Response 4: In response to the commenter's concern about comment fatigue, the EPA extended the comment period from March 11 to March 26, 2024, to offer additional time for participation and comment. Additionally, the EPA offered three technical outreach webinars explaining the proposal and a virtual public hearing accepting public testimony about the proposal. Refer to response to section 17.1 of this response to comment document for more details. Furthermore, the EPA has a dedicated email address, merp@epa.gov, where questions about the MERP program may be submitted. Comments regarding the Super Emitter Program relate to a separate rulemaking, therefore are out of scope with regard to this rulemaking. In response to commenters statement that the EPA has not timely finalized the amendments to subpart W, the EPA disagrees as previously stated under response 4 in section 17.7 of this response to comment document.

Comment 5: Commenter 0294 recommended the EPA and partner agencies leverage MERP funding to collect the equipment, site, and basin level data needed to improve and validate the accuracy of GHGRP reporting. The commenter stated that basin-level data can be used as a way to evaluate the extent of unreported or underreported emissions and inform potential revisions to subpart W and that site-level and equipment-level measurement data and probabilistic emission models can improve the accuracy of operator reporting and appropriately attribute unreported or underreported inventory emissions identified in basin-scale observations to subpart W reporters. The commenter also recommended the EPA and collaborating agencies allocate at least $200 million of the available MERP funding to monitoring programs, supporting the rapid, national

scale-up of independent, country-wide measurement programs. The commenter noted emerging satellite missions with publicly available data such as Carbon Mapper and MethaneSAT rely on philanthropic funding and that the EPA can ensure that such efforts are sustained through competitive solicitations. The commenter suggested data collected by satellites could play an important role in the EPA's new Super Emitter Program.

Response 5: The EPA acknowledges and appreciates the commenter's suggestions on opportunities to leverage the MERP funding to improve the accuracy of methane emissions data; however, how funding is distributed under the MERP program is out of scope with regard to the WEC rulemaking. The EPA is moving expeditiously to implement incentives for methane mitigation and monitoring. For current information on the funding opportunities under the MERP, stakeholders should visit: https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program.

Comment 6: Commenters (0180, 0221) suggested the EPA focus more on providing "carrots" (incentives) rather than "sticks" (punishments) to achieve the desired results of methane reduction. The commenters noted the preamble discussed the MERP but did not indicate how much of the funding has been obligated or what results have been produced. The commenters stated the WEC is a "stick", and the impact will exceed the value of the "carrot" unless a different approach is taken. The commenters suggested the EPA reevaluate and revise the rule which they believed would reduce administrative costs to the EPA.

Response 6: The EPA is moving expeditiously to implement incentives for methane mitigation and monitoring; however, those steps are outside the scope of this rulemaking. Refer to section 7 of this response to comment document for discussions on incentives, in addition to section 17.3 response 6 regarding congressional intent to incentivize further emissions reduction and 17.10 response 7 below for implementation incentives for reducing methane emissions. For current information on the funding opportunities under the Methane Emissions Reduction Program, stakeholders should visit: https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program.

Comment 7: Commenters (0184, 0294) noted that MERP complements the EPA's methane standards and incentivizes adoption of mitigation measures in that MERP provides financial support to improve methane monitoring and mitigation. The commenters noted that facilities adopt mitigation measures reduce their WEC obligation and work toward compliance with the mandatory methane emission standards would not pay the charge.

Response 7: The EPA acknowledges the commenters' recognition of there being ready-to-implement and cost-effective strategies available to lower methane intensity and improve operational efficiencies. The EPA is moving expeditiously to implement incentives for methane mitigation and monitoring; however, those steps are outside the scope of this rulemaking. For current information on the funding opportunities under the MERP, stakeholders should visit: https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program.

Comment 8: Commenters (0304, 0701, 0934) expressed a strong desire to see the MERP implemented as soon as possible. Commenter 0304 shared how climate change is affecting their life. Commenter 0701 shared concerns about disadvantaged communities.

Response 8: The EPA acknowledges the commenters' support to implement MERP.

Comment 9: Commenter 0293 recommended delaying implementation of WEC until at least reporting year 2025 to maintain consistency and decrease potential uncertainty in calculations of exempt emissions, waste emission thresholds, and WEC penalty determinations because there will be many facilities that were not subject to GHG reporting in 2024 but will be in 2025 due to the global warming potential change from 25 to 28 tons of carbon dioxide equivalence.

Response 9: The EPA acknowledges the concern raised by the commenter regarding the changes to the global warming potential of methane made in the final Greenhouse Gas Reporting Program rule (89 FR 31802, April 25, 2024). (. The EPA notes that while there is potentially an impact to WEC facilities through the use of the subpart W reported emissions and data, the changes made were through a separate rulemaking and are out of scope of the current rulemaking. We also note that the EPA has begun outreach regarding the final subpart W rulemaking and the final Greenhouse Gas Reporting Program rulemaking and will conduct outreach on the WEC rulemaking. Regarding the suggestion to delay implementation of the WEC until reporting year 2025 or later, refer to section 17.7, response 4 of this response to comment document for the EPA's response to similar comment. As explained in that section, the EPA believes the only logical interpretation of CAA section 136 is that the first year of administration of WEC will be based upon methane emissions occurring during calendar year 2024 based upon data reported pursuant to subpart W by March 31, 2025.

Comment 10: Commenter 0219 recommended that the EPA aligns with the United Nations convened Oil and Gas Methane Partnership 2.0 ("OGMP") system in line with international best practices for measurement, monitoring, reporting and verification. They comment that such alignment would ensure compliance, transparency, and accountability, and provide investors with comparable accounting and measurement methodologies.

Response 10: The EPA acknowledges the commenter's suggestion to align methane measurement, monitoring, reporting and verification with the United Nations convened Oil and Gas Methane Partnership 2.0; however, such measurement, monitoring and verification are addressed under subpart W and are out of scope of this current rulemaking.

Comment 11: Commenter 0327 stated that the WEC regulation is not a necessary prerequisite for the program (the EPA assessing and collecting fees starting with 2024 emissions) to move forward. The commenter stated that the statute itself gives the Administrator the authority to start assessing and collecting the WEC. Thus, apart from the implementation rule, the commenter stated their belief that the EPA has a freestanding duty to collect fees under section 136 based on emissions that occur in 2024.

Response 11: The EPA acknowledges the commenter's argument that the EPA could have implemented the WEC without a rulemaking, because the statute itself gives the Administrator the authority to start assessing and collecting the WEC. Specifically, CAA section 136(c) directs the Administrator to impose and collect a charge for excess methane emissions from applicable facilities that report to the Greenhouse Gas Reporting Program petroleum and natural gas systems source category (40 CFR part 98, subpart W) and that exceed statutorily specified waste emissions thresholds; and CAA section 136(e) establishes specific monetary amounts for the charge. However, the Agency judged that a rulemaking would enhance clarity and predictability for all interested parties. ...

17.9 Out of Scope

Comment 1: Commenter 0299 stated that the EPA might argue that Section 136's methane fee is not really a tax, but an incentive structure aimed at reducing greenhouse gas emissions rather than raising revenues. They contended that this violates the commerce clause because the statute does not regulate commerce but emissions, a power reserved for the states. The commenter referenced the Child Labor Tax Case (Bailey v. Drexel Furniture Co.), 259 U.S. 20, 39 (1922), and M'Culloch v. Maryland, 17 U.S. 316 (1819), stating, "So here the so-called tax is a penalty to coerce people of a state to act as Congress wishes them to act in respect of a matter completely the business of the state government under the Federal Constitution."

Commenter 0299 noted that the Constitution requires "all Duties, Imposts and Excises shall be uniform throughout the United States" (U.S. Const. Art. I, Sec. 8, Cl. 1). The purpose of this "Uniformity Clause" is "to cut off all undue preferences of one State over another in the regulation of subjects affecting their common interests" (United States v. Ptasynski, 462 U.S. 74, 81 (1983); Knowlton v. Moore, 178 U.S. 41, 100–06 (1900)). The commenter argued that Section 136's fee on methane emissions is a tax because at least "some of the... costs paid by the regulated parties actually inure to the benefit of the public rather than directly to the benefit of those parties" (Skinner v. Mid-Am. Pipeline Co., 490 U.S. 212, 223 (1989)). The commenter stated that these costs are borne disproportionately by a few states that will bear the majority of the charges, as oil and gas production accounts for most methane emissions from facilities subject to Section 136's charge.

The commenter stated that a tax's non-uniform effects are not necessarily fatal, but "[a] thorough examination of the records of the Continental Congress and the Federal Convention" shows "that the purpose of the clause is to prevent Congress from favoring one state or region over another" (Nelson Lund, The Uniformity Clause, 51 U. Chi. L. Rev. 1193, 1198 (1985)). The commenter cited Knowlton v. Moore, 178 U.S. 41, 96 (1900), emphasizing that the key concern was the discrimination among states that might arise from a disproportionate share of any tax being paid within a particular state.

The commenter argued that the assessment disproportionately impacts a handful of states, raising the issue of unconstitutional discrimination. The commenter further stated that methane emissions from oil and gas facilities account for only about 3 percent of greenhouse gas

emissions in the United States and approximately 0.4 percent of global greenhouse gas emissions but that nonetheless, Congress has singled out these emissions for unfavorable treatment, imposing the burden primarily on a few states.

Response 1: The EPA agrees that the methane charge established under section 136 of the CAA is not a tax, but disagrees with the remainder of these comments. The methane charge program does not regulate emissions; instead it imposes a charge on emissions above specific thresholds set by Congress. Further, the methane charge applies at the facility level, not the state level. States are under no obligation to pay the charge except in any instance where a state is the owner or operator of a WEC applicable facility and that state is the WEC applicable facility's WEC obligated party. Finally, the EPA notes that methane is 28 times as potent a greenhouse gas as carbon dioxide. As recently noted in the Final NSPS and EG for Oil & Gas, the Crude Oil and Natural Gas source category is the largest industrial source of methane in the U.S. Oil and natural gas production, natural gas processing, and natural gas transmission and storage account for 28 percent of anthropogenic U.S. methane emissions. 89 Fed. Reg. at 16,845.

Comment 2: Commenters (0243, 0795) suggested other industries, such as meat and dairy, are large contributors of methane emissions. Commenter 0243 recommended starting campaigns to teach people about altering diets. Commenter 0795 suggested using carbon credits for cattle ranchers to incentives using red algae in their feed. Additionally, the commenter proposed reducing agricultural runoff to prevent seasonal algae blooms.

Response 2: The comments are outside the scope of this rulemaking. The proposed rulemaking implements CAA section 136(c) in establishing a waste emissions charge that applies to the owners and operators of certain facilities in the petroleum and natural gas systems industry. Emissions of methane from other sources, including agricultural, gas are outside of the scope of CAA section 136.

Comment 3: Commenters (0256, 0292, 0885, 0908) suggested that the fossil fuel industry and its shareholders should be held liable for legal and financial damages resulting from health and environmental impacts associated with oil and gas production. Limiting methane emissions is therefore crucial in protecting taxpayers from escalating costs and liabilities. Commenter 0292 noted that using satellite data, they calculated that 163 billion scf of natural gas was lost on Federal and Tribal lands in 2019 alone, wasting gas worth $509 million representing a loss of $64 million in Federal, Tribal, and state royalty revenues.

Response 3: These comments are outside the scope of this rulemaking. This rulemaking implements CAA section 136(c), which establishes a waste emissions charge to be collected on methane emissions that exceed an applicable waste emissions threshold from owners and operators of certain facilities in the petroleum and natural gas systems industry.

Comment 4: Commenter 0203 suggested while focusing on methane emission reduction, it is crucial to ensure the safety and health of workers. Adding that worker guidelines and protocols for safe practices, usage of technology, and proper materials should be integral in the rule's implementation framework. Commenter 0286 applauded the steps taken to support good jobs

with MERP, by incorporating unions and frontline communities, the MERP is centering a skilled workforce and helping communities most impacted by emissions and ensuring grantees adhere to the best labor principles.

Response 4: The EPA agrees with commenters that worker safety and health are important; however, these comments are outside the scope of this rulemaking. Worker health and safety falls under the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA); therefore, the comments are out-of-scope as they do not address any impacts or have further recommendations for the proposed rulemaking.

Comment 5: Commenters (0180, 0221, 0833, 0936) questioned how WEC revenue would be used and noted without guidance may only be a revenue generator with little environmental benefits. Commenters (0180, 0221) suggested they should use excess revenue to offer more incentives (grants or loans) to help fund emission reduction programs and help from these costs being passed on to end consumers. Commenter 0936 suggested excess revenue should go to mitigating the health effects and associated pollution in low-income and disadvantaged communities.

Commenter 0203 suggested that the EPA offer additional incentives for facilities that adopt emission reduction technologies ahead of regulatory deadlines.

Commenter 0830 proposed that fines should also be imposed on other co-pollutants from methane extraction to generate additional revenue for funding clean energy transition research and incentives.

Response 5: The EPA acknowledges these comments; however, they are outside of the scope of this rulemaking. The EPA notes that the WEC obligation collected under this rule will take the form of payments to the U.S. Treasury, as discussed in section V. of the preamble to the final rule. This rule does not establish specific uses for payments collected.

Regarding comment that the EPA should offer additional incentives for adoption of emission reduction technologies, the Agency notes that information regarding financial and technical assistance available through the EPA's Methane Emissions Reduction Program to accelerate methane and other GHG emissions reductions in the oil and natural gas sector may be found at https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program.

Regarding comment that the EPA should impose additional fines on other co-pollutants, the EPA notes that this rulemaking applies to methane emissions from certain petroleum and natural gas systems facilities and thus regulation of co-pollutants is outside of the scope of this rulemaking.

Comment 6: Commenters (0228, 0275, 0666, 0684, 0862, 0873, 0936) proposed a variety of different ideas and scenarios to reduce methane emissions beyond those presented in the WEC rulemaking.

Commenter 0862 suggested the outlawing of drilling new wells used for fracking, banning of new LNG export terminals, replacing hydrogen hubs with renewable sources, using alternate solutions for trash, and outlawing incinerators.

Commenter 0666 stated that electric vehicles, internal combustion engines, urban sprawl and traffic congestion needlessly destroy the environment and suggested funds should be invested in railways, streetcars & trolleys.

Commenters 0275 noted engine manufactures have been working to reduce emissions from engines and modifications to engines to reduce methane emissions provide co-benefits of reducing VOC, CO, and formaldehyde without increasing NO_X.

Commenter 0873 suggested industry should not be allowed to claim methane gas as a valuable resource yet be able to vent and flare it. The EPA must require all industries and companies, at all stages of the methane supply chain, to incorporate the cost of methane abatement into deciding whether a given project is profitable and in the public interest, or whether methane is a financially desirable energy source for a given purpose. Commenter 0684 proposed instead of taxing operators for flaring and venting they should be incentivized. Making deployment of small-scale solutions economical could fully change how methane gas is qualified and reduce direct CO2 emissions from flaring and replace diesel for heavy vehicle or for power generation.

Commenter 0936 proposed integration of elements of the IRA with the Clean Air Act and Toxic Substance Control Act with initiatives such as Climate Impact Environmental Impact Fund, Climate Protection and Restoration Initiative, programs in the USDA, and foreign programs such as Ambient Carbon to reduce and remove methane from the atmosphere. Additionally, commenters (0228, 0936) believe a more effective structure would be a cap and invest type structure, that would continuously offer incentives for emission improvement, known as a methane emission reduction credit or carbon credits. Operators with emissions above the threshold would incur liabilities to be balanced from asset purchases at regular auctions or directly from other participants. Commenter 0228 suggested only a portion of the fines could be offset by the purchase of carbon credits. The commenters suggested this would spur changes in business practices not just provide a penalty for methane production.

Commenter 0659 proposed implementation of a methane emission reduction credit program, which would include a transferable asset between the EPA, petroleum and natural gas system operators, and other market participants. Under the system, each credit would represent 1 metric ton of methane emissions avoided and would be auctioned by the EPA beginning at $900 per credit. Proceeds from auctions would be invested in projects and grants toward improving methane mitigation as well as invested in an environmental justice fund.

Response 6: These comments are outside the scope of this rulemaking.

Comment 7: Commenters (0530, 0936) recommended various ways to improve methane leak management, including maintaining detailed information about leaks and potential contributing

factors, establishing a centralized agency for leak monitoring, and providing government-funded leak assistance.

Commenter 0530 suggested that the EPA should track the amount of leaks, describe the equipment that failed, document the sealing techniques used (including any difficulties), and include pertinent well plugging information. The commenter also recommended public recognition for companies that are leak-free, have the lowest emission rates, or respond promptly to correcting and limiting large leaks. The commenter argued that the 15-30 day delay for correcting leaks is too long and suggested that specialized materials and tools for leak correction could be subsidized from WEC charges. Additionally, if companies struggle to seal leaks, the EPA and State DEP should offer assistance.

Commenter 0936 criticized current leak surveying laws as not strict enough, providing an example of inadequate leak surveying inside a large compressor building using LDAR. The commenter recommended establishing a central agency, funded by oil and gas companies, to monitor companies and conduct surprise audits. The commenter also expressed concern about the significant methane emissions from orphaned and abandoned wells.

Response 7: The suggested recommendations are outside the scope of this rulemaking. The EPA notes without reopening that aspects of the recommendations relating to recordkeeping of identified leaks are included in the final rule "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review" (89 FR 16820, issued March 8, 2024).

Comment 8: Commenters (0182, 0673, 0674, 0685, 0825, 0855, 0864, 0936) provided comments on environmental and business concerns. Commenters (0685, 0864) emphasized the importance to protect the air, land, and water over money and we need to reverse course. Commenter 0673 stated their experience with well water contamination from fracking and suggested utilities meet stricter regulations for discharge into waterways.

Commenter 0825 suggested to switch to renewable energy.

Commenters (0674, 0855) suggested for stricter rule enforcement and industry not taxpayers should pay for environmental cleanup.

Commenter 0936 expressed concern with smaller facilities not complying with other emission standards, including VOC's, benzene, and radiation putting residents and workers at high risk to dangerous exposure levels. The commenter suggested if state agencies and the EPA were better staffed, better equipped, and did more frequent inspections for methane emissions they would detect radioactive and different hydrocarbon emissions as well.

Commenter 0182 provided their effort in trying to reconcile emission volumes with production data using records from Wyoming Gas and Oil Conservation Commission and WYDEQ. The commenter noted discrepancies between the reported gas volumes and the volumes of gas sent to market from each well. They observed that ongoing resistance to regulations within the fossil

fuel industry and hostility toward climate change measures in state legislatures would likely result in fugitive wellhead leaks, produced water catch ponds, and tank storage facilities remaining inadequately addressed, continuing as sources of atmospheric pollution.

Commenter 0184 stated that they have produced an annual report benchmarking oil and gas company methane and other greenhouse gas emissions performance using the EPA data, and that the variation in corporate emissions performance revealed by this analysis, even among similarly sized companies in the same producing basin, makes clear that there is tremendous room to reduce emissions in much of the sector.

Response 8: These comments are outside the scope of this rulemaking and do not address or provide any suggestions or supporting data for the proposed rulemaking. The EPA agrees on the importance of protecting our natural resources (*i.e.*, the air, land, and water.) The EPA notes that methane does affect public health and welfare as described in section I.C.1. of the preamble of the final rule.

Comment 9: Commenter 0273 contended that natural gas development in the United States, and particularly in the Appalachian Basin, has some of the lowest methane intensity rates in the world. For example, the International Energy Agency recognizes that the U.S. methane intensity of 8 tons (per thousand tons of oil equivalent) is one of the lowest of major oil and natural gas producing countries in the world, lower than China (9), Russia (13), Venezuela (48) and Libya (103). Here in the United States, the Appalachian Basin's methane intensity is the lowest of the nine major hydrocarbon producing basins in the entire country. The commenter pointed to natural gas operators' voluntary participation in initiatives such as One Future, API's The Environmental Partnership, the U.S. EPA's Methane Challenge and the Global Methane Initiative.

Response 9: This comment is outside of the scope of the WEC rulemaking.

17.10 Requests for additional exemptions

Comment 1: Commenters (0197, 0209, 0221, 0222, 0281, 0283, 0690) requested inclusion of an exemption for low-producing (marginal) wells. Commenters (0281, 0283) stated that the WEC renders low-producing wells uneconomic, which could lead to decreased domestic production and stranded hydrocarbons and subsequently lead to increased commodity prices and incentivize exploration for new oil and gas reservoirs. The commenters proposed defining a "low-producing well" as one that produces less than or equal to 15 barrel of oil equivalent per day (90 Mcf/d), which is consistent with the definition used by the IRS in the tax code and the Department of Energy and the EPA in certain studies and proposals on marginal or stripper wells. Commenter 0283 stated that as of the end of 2022, there were over 912,000 oil and gas wells in the U.S., of which approximately 77 percent were marginal or low production, and that these wells accounted for approximately 6 percent of total oil and gas production in the United States. Commenter 0283 asserted that without an exemption for low-producing wells, the WEC charge will promote waste by stranding existing hydrocarbons and incentivizing new exploration and production efforts elsewhere. Commenters (0281, 0283) indicated that Congress, state legislatures, and regulatory

agencies have decided as a policy choice to give certain tax credits, deductions, and exemptions with respect to income and production taxes attributable to these types wells in order to allow taxpayers to offset increased costs and lower revenues inherent in their continued operation, and that the imposition of WEC charges on low production wells thus runs contrary to legislatively accepted approaches that were implemented to assist smaller producers and to encourage continued production from these marginal wells for the purposes of national energy security and in the face of commodity price uncertainty.

Commenter 0197 made an alternative suggestion for the EPA consider adjustments to the exemptions to level the playing field for smaller operators in order to avoid unintended consequence for the oil-dominated production industry.

Commenter 0221 encouraged the EPA to acknowledge and incorporate environmental justice, community involvement, and small business impacts in the final rule. The commenter stated that many of the oil and gas sources in Utah are located in rural areas where the oil and gas industry has a large economic impact and encouraged the EPA to continue to support flexibility with the rule to ensure balance with economics and the protection of human health and the environment. The commenter stated that there are many low-producing wells within the State and small businesses that own and operate those wells will need support and time to understand requirements, acquire and install new equipment, and make necessary procedural changes. The commenter encouraged allowing a longer implementation time and/or some flexibility for such low-producing wells.

Commenter 0209 noted that as a result of technology and efficiency measures, oil and natural gas production emissions were reduced by nearly 70 percent between 2011 and 2019 and were expected to continue to trend downward. Commenters (0209, 0222) expressed concern about continuing to be economically viable should the WEC rule apply to a business such as theirs, a small business with marginal wells with five or fewer employees at such locations.

Commenter 0283 further stated that low-producing wells, when properly operated and maintained, are not likely to be the sources of the "super-emitter" events that the EPA and certain other environmentally focused legislatures seemed to be most concerned about. The commenter expressed the position that low-producing wells and related equipment that are responsibly operated and well maintained (and are not malfunctioning) are not a significant source of emissions and that this position is consistent with several studies on methane emissions from low-producing wells, wherein the top handful of sources that contributed to the vast majority of methane emissions observed were poorly maintained and/or malfunctioning. Commenters (0281, 0283) expressed that given that the imposition of the WEC may force responsible operators to prematurely shut-in or abandon wells, or incur excess liabilities potentially leading to insolvencies, these assets risk falling into bankruptcy processes and/or the hands of inexperienced or unsophisticated owners who are unable or unwilling to maintain them properly and, in a manner, compliant with the EPA's regulations, leading to more, not less, emissions.

Commenter 0690 stated concern that the proposed rule would result in the plugging of all of their wells because the cost of compliance would put them out of business.

Response 1: The EPA does not agree with the commenters' requests to include an exemption for low-producing or marginal wells. As discussed in section II.D. of the preamble to the final rule CAA section 136 provides for specific exemptions from the WEC, and does not include an exemption for low-producing or marginal wells. The EPA lacks authority to include additional exemptions not enumerated by Congress, and thus did not propose, and is not including in the final rule, exemptions other than those prescribed in section 136. The EPA also notes that the commenter did not provide specificity on how to address any perceived potential disproportionate impacts within the oil industry. Regarding comments specific to economic impacts to small businesses, the EPA refers commenters to section VI.C. of the preamble to the final rule and to section 9.1 of the RIA to the final rule. Furthermore, Congress established new authorities to the EPA under the Clean Air Act to provide financial and technical assistance to reduce methane emissions from the oil and gas sector through the Methane Emissions Reduction Program (MERP). As part of MERP, the EPA and the U.S. Department of Energy (DOE) will provide more than $1 billion in financial and technical assistance. This funding may be used to incentivize methane mitigation and monitoring as established through CAA section136(a) of the Clean Air Act. The EPA is moving expeditiously to implement incentives for methane mitigation and monitoring; however, those steps are outside the scope of this rulemaking. For current information on the funding opportunities under the MERP, stakeholders should visit: https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program.

Comment 2: Commenter 0195 stated that Congress created the WEC to encourage methane emissions reductions, but as proposed by the EPA, the tax is charged before facilities have the chance to reduce emissions. They comment that this is counterproductive because it takes dollars away from the facility that could be utilized for methane reduction.

Response 2: The EPA acknowledges the commenter's concern. The best reading of CAA section 136 is that the EPA must begin collecting the Waste Emissions Charge on methane emitted during calendar year 2024, which is before full implementation of NSPS OOOOb/EG OOOOc. Additionally, as part of the Inflation Reduction Act (IRA), Congress established new authorities to the EPA under the Clean Air Act to provide financial and technical assistance to reduce methane emissions from the oil and gas sector through the Methane Emissions Reduction Program (MERP). As part of MERP, the EPA and the U.S. Department of Energy (DOE) will provide more than $1 billion in financial and technical assistance. This funding may be used to incentivize methane mitigation and monitoring as established through CAA section 136(a) of the Clean Air Act. The EPA is moving expeditiously to implement incentives for methane mitigation and monitoring; however, those steps are outside the scope of this rulemaking. For current information on the funding opportunities under the MERP, stakeholders should visit: https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program.

Comment 3: Commenter 0271 suggested that there was a missing regulatory compliance exemption for offshore petroleum and natural gas facilities and offered a change to the definition

of ‘designated facility’ to include offshore facilities subject to 30 CFR part 550 subpart C so it would read as follows:

Designated facility means, for purposes of the regulatory compliance exemption of this part, designated facilities, as defined in 40 CFR 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, or offshore facilities subject to 30 CFR part 550 subpart C.

Response 3: The EPA disagrees with the commenter. The regulatory compliance exemption which Congress established in the Clean Air Act section 136(f)(6) allows only for those facilities regulated pursuant to subsections (b) and (d) of section 111 of the CAA to potentially take advantage of the exemption provided that all the conditions to meet the exemption have been met. Congress established this specific exemption despite the fact that offshore petroleum and natural gas facilities are regulated separately, pursuant to 30 CFR part 550 subpart C. The EPA did not propose, and is not including in the final rule, exemptions other than those prescribed in section 136.

Comment 4: Commenter 0293 noted the final Methane Rule acknowledged the technical infeasibility for some sources to route natural gas production to a sales line or to use the gas at a facility for a beneficial purpose and allows for flaring under an annual certification by a licensed professional engineer. The commenter suggested the EPA include an exemption from the WEC based on these same conditions. The commenter noted the final Methane Rule requires a detailed analysis, documentation, an infeasibility determination, and certification to be done annually and submitted in the annual compliance report. The commenter added that without the exemption in the WEC, facilities could be penalized for methane emissions that are compliance with the Methane rule. The commenter requested an infeasibility exemption be added in an updated proposal and made available for public comment prior to final implementation.

Response 4: Pursuant to CAA section 136(f)(5), emissions that would otherwise be subject to charge are exempt 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.” The EPA refers the commenter to section II.D. of the preamble for discussion of how this exemption will be implemented, and notes that the following emissions sources may be eligible for the exemption provided all four criteria are met: the use of gas as an onsite fuel source, gas used for another useful purpose that an otherwise purchased fuel or raw material would have served, gas reinjected into a well, and flaring of gas. Finally, the EPA notes that it would be inconsistent with section 136 to exempt methane emissions other than those prescribed by the statute.

Comment 5: Commenter 0530 suggested an inducement to subtract the cost of purchasing or leasing optical gas imaging (OGI). The commenter noted that OGI is expensive but can visualize leaks, and for companies that have low output that can be prone to leaks, its use should be encouraged. Commenters (0150, 0936) also suggested owners and operators receive credit if they

have proactively used advanced technologies toward eradicating methane emissions from each of their facilities.

Response 5: The EPA appreciates the input from the commenters. As part of the Inflation Reduction Act (IRA), Congress established new authorities to the EPA under the Clean Air Act to provide financial and technical assistance to reduce methane emissions from the oil and gas sector through the MERP. As part of MERP, the EPA and the U.S. Department of Energy (DOE) will provide more than $1 billion in financial and technical assistance. This funding may be used to incentivize methane mitigation and monitoring as established through CAA section 136(a) of the Clean Air Act. The EPA is moving expeditiously to implement incentives for methane mitigation and monitoring; however, those steps are outside the scope of this rulemaking. For current information on the funding opportunities under the MERP, stakeholders should visit: https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program.

Comment 6: Commenter 0231 suggested the EPA consider an exemption for oil and gas facilities on Indian Country Lands within the Uintah and Ouray Reservation in Utah if such facilities are subject to and in compliance with the "Federal Implementation Plan for Managing emissions from Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah" (U&O FIP). The commenter added that compliance with the FIP is demonstrative of meaningful emission reductions, and as such should be considered as a viable basis for issuing a WEC exemption to U&O FIP-compliant facilities on the Reservation.

Response 6: The EPA disagrees with the commenters' requests to include an exemption for oil and gas facilities on Indian Country Lands within the Uintah and Ouray Reservation in Utah if such facilities are subject to and in compliance with the U&O FIP. As noted in section II.D. of the preamble to the final rule, CAA section 136 provides for specific exemptions from the WEC, and does not include the exemption commenters suggest here. for low-producing or marginal wells. The EPA lacks authority to include additional exemptions not enumerated by Congress, and thus did not propose, and is not including in the final rule, exemptions other than those prescribed in section 136. The EPA does not believe it is appropriate to establish an exemption as described by the commenter, but rather the EPA believes it is more appropriate for such an evaluation to occur for purposes of the regulatory compliance exemption under section 136(f)(6) once the U&O becomes subject to a Tribal plan or Federal plan pursuant to 40 CFR Part 60 – Subpart OOOOc Emissions Guidelines for Greenhouse Gas Emissions from Existing Crude Oil and Natural Gas Facilities.

Comment 7: Commenter 0231 expressed concern that operators currently voluntarily reducing emissions will cease such efforts so that they will be able to pay the annual WEC fee. The commenter believed WEC will impact the ability of operators to invest in equipment and emissions monitoring technologies, potentially resulting in substantially less emissions reduction over time than what is anticipated by WEC. The commenter suggested the EPA should consider an exemption or credit to operators producing Tribal oil and natural gas who can demonstrate year-over-year emissions reductions across all applicable assets on the Reservation. This would allow operators to continue their voluntary reduction efforts, continue to produce Tribal oil and gas, while mitigating the impact of the WEC.

Response 7: The EPA disagrees that proactive operators will stop voluntary efforts to reduce emissions to pay the WEC fee. The Agency commends the efforts of those operators who have made such investments in equipment and emissions monitoring technologies such that they are realizing methane reductions. The reductions as described by the commenter will result in minimizing WEC obligations for proactive operators and may ultimately eliminate any WEC obligations. Section 5.1 of the RIA to the final rule provides an estimated analysis of the marginal abatement costs to determine at what point investment in methane mitigation is favored over payment of the WEC obligation.

To further incentivize and accelerate methane mitigation, as part of the IRA, Congress established new authorities to the EPA under the Clean Air Act to provide financial and technical assistance to reduce methane emissions from the oil and gas sector through the MERP. As part of MERP, the EPA and the DOE will provide more than $1 billion in financial and technical assistance. This funding may be used to incentivize methane mitigation and monitoring as established through CAA section 136(a) of the Clean Air Act. The EPA is moving expeditiously to implement incentives for methane mitigation and monitoring; however, those steps are outside the scope of this rulemaking. For current information on the funding opportunities under the MERP, stakeholders should visit: https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program.

Comment 8: Commenter 0288 suggested the EPA either revise its basin-wide definition of facility such as to not conflict with the permitted-emission categories or create an additional permitted-emission category and approach for producers that have minimal gas sales and are primarily a crude-oil producer.

Response 8: The EPA disagrees with the commenter's suggestion to revise the basin-wide definition or create an additional category and approach for producers that have minimal gas sales and are primarily a crude-oil producer. The WEC rule does not establish permitted emission categories. Regarding the use of the basin-wide definition of a facility, see response to comment 2 in section 1.1 of this response to comment document. Regarding the applicable waste emissions threshold for oil dominated production, see response to comment 8 in section 2.1 of this document.

18 Typographical Errors and Cross References

Comment 1: Commenter 0905 provided the following list of what they stated may be typographical errors and mistakes in cross references in the proposed rule:

- 99.2 – proposed definitions of "gathering and boosting system" and "gathering and boosting system owner or operator" do not match the proposed revisions under subpart W. Definitions should be aligned between 40 CFR 98 and 40 CFR 99.
- 99.31(a) – "40 CFR 99.30(a) through (f)" should be "40 CFR 99.30(a) through (e)".
- 99.31(b) – "paragraphs (b)(1) through (10) of this section" should be "paragraphs (b)(1) through (11) of this section".
- 99.31(b)(8) – "Nnatural gas" should be "natural gas".

- 99.32(b)(1) – References to subpart W may need to be updated based on proposed subpart W revisions.
- 99.41(c) – the word "requirement" is repeated, and the second instance should be deleted.
- Cross references to the regulatory compliance exemption may need to be clarified.
- 99.7(b)(2)(iv) – "99.41" should be "99.42"; "99.40" might need to be "99.41".
- 99.8(c)(2)(i) – "99.41" should be "99.42".
- 99.8(d)(2) – "99.41(c)" should be "99.42(c)".
- 99.21(c) – "99.40" might need to be "99.41".
- 99.21(d) – "99.40" might need to be "99.41".
- 99.22 – "99.40" might need to be "99.41".
- 99.40(c) – "99.41" should be "99.42".
- 99.40(d) – "99.41" should be "99.42".
- 99.41(a) – language appears inconsistent with 99.40(a). Reference to "99.21(d)" should be removed since that citation says that the regulatory exemption does not apply.

Commenter 0290 provided the following as typographical errors that they stated should be addressed in the final rule:

- The performance metric for transmission and storage should be consistently defined as 0.11percent in 40 CFR 99.20(d). Equation B-4 in 40 CFR 99.20(d) calculates the annual waste emissions threshold for transmission and storage facilities. The equation correctly includes the IRA-defined segment methane intensity threshold as 0.0011 (*i.e.*, 0.11percent). However, in the related parameter descriptions for equation B-4, the threshold is incorrectly stated as 0.0005 (*i.e.*, 0.05percent). The error in the parameter description should be corrected to 0.0011.
- In 40 CFR 99.41(c), the word "requirements" is repeated and should be corrected – *i.e.*, "…and the methane emissions requirements requirements of an applicable approved state, Tribal, or Federal plan…"

Response 1: The EPA is finalizing corrections to the typographical errors and incorrect cross-references identified by the commenters.