

### 3. Modification of Scheduling Benchmarks

The Proposed 2020 FCA provided that communities with “medium” FCA impacts could qualify for compliance schedules of up to 15 years and “high” impact communities could receive compliance schedules up to 25 years, or as long as the useful life of the CSO controls for unusually high impacts. For users of the Proposed 2022 FCA, it is more transparent and consistent to define a recommended scheduling boundary rather than retain the “useful life” language. It is important to consider human health and environmental impacts as well as cost when considering extended schedules. EPA is also mindful that prolonging water quality impairments could exacerbate environmental justice concerns. EPA believes that, for unusually high impacts, 25 years is a reasonable recommended scheduling benchmark that is more consistent with environmental protection and the Agency’s past FCA practice.

EPA proposes to revise the FCA guidance to keep 15 years as the outer recommended boundary for “medium” impact communities and change the benchmark for “high” impact communities to 20 years, or up to 25 years for unusually high impacts, but is seeking comment on whether these are appropriate recommended scheduling boundaries.

### III. Overview of the Proposed 2022 FCA Guidance

The 2022 FCA Guidance recommends two alternative approaches for assessing a community’s financial capability to carry out CWA control measures. The first alternative is the existing 1997 FCA methodology with expanded consideration of poverty and impacts on the population in the service area with incomes in the lowest quintile. EPA is retaining the 1997 Residential Indicator (*i.e.*, 2% of MHI) and the Financial Capability Indicator because they measure factors required under the Clean Water Act by the CSO Policy as part of a financial capability assessment.<sup>5</sup> These indicators also allow for consistent comparative analysis

<sup>5</sup> The Clean Water Act requires that each permit, order, or decree for a discharge from a municipal combined storm and sanitary sewer conform to the CSO Policy. 33 U.S.C. 1342(q). The CSO Policy lists the following considerations for financial capability: Median household income; total annual wastewater and CSO control costs per household as a percent of median household income; overall net debt as a percent of full market property value; property tax revenues as a percent of full market property value; property tax collection rate; unemployment; and bond rating. See 59 FR 18688, 18694 (April 19, 1994).

among communities. The new critical metric, the Lowest Quintile Poverty Indicator (LQPI), allows the Agency to assess severity and prevalence of poverty. The second alternative is the development of a dynamic financial and rate model that looks at the impacts of rate increases over time on utility customers.

Both alternatives permit consideration of other metrics and may support an extended implementation schedule. Nonetheless, EPA does not anticipate establishing implementation schedules that would exceed 20 years, or up to 25 years for communities that demonstrate unusually high impacts. The Proposed 2022 FCA can help to ensure that local challenges related to low-income households are better reflected in CWA implementation schedules. Consistent with previous policy, EPA plans to consider any relevant financial or demographic information presented that illustrates the unique or atypical circumstances faced by a community. The Proposed 2022 FCA is available at: <https://www.regulations.gov/>, Docket ID No. EPA-HQ-OW-2020-0426.

Additionally, EPA recommends application of the methodologies from the Proposed 2022 FCA to the consideration of economic impacts to public entities for supporting revisions to designated uses, WQS variances, and anti-degradation reviews for WQS. EPA intends that the recommended expanded matrix for WQS decisions in the Proposed 2022 FCA, once finalized, along with the electronic spreadsheet tools for the public sector,<sup>6</sup> would replace the worksheets and calculations for the public sector sections of the 1995 *Interim Economic Guidance for Water Quality Standards*. The Proposed 2022 FCA does not revise the recommended methodology in the private sector sections of the 1995 WQS Guidance.

### IV. Request for Public Comments

EPA requests public comment on the Proposed 2022 FCA. Specifically, EPA is requesting comment on the following:

1. Should the Final 2022 FCA incorporate a single new metric—LQPI—that considers lowest quintile income and poverty elements together? Or should the Final 2022 FCA incorporate two new metrics (a lowest quintile income indicator and a poverty indicator) to be calculated separately and combined in a matrix?

2. EPA is seeking additional examples or case studies of funding and financing considerations to add to Appendix C.

<sup>6</sup> These electronic spreadsheet tools for the public sector, available at <https://www.epa.gov/wqs-tech/spreadsheet-tools-evaluate-economic-impacts-public-sector>, encompass the data inputs and calculations of the 1995 *Interim Economic Guidance for Water Quality Standards*.

3. EPA is seeking feedback on the current proposed scheduling benchmarks of 20 years for “high” Expanded FCA Matrix impacts, or 25 years for unusually high impacts. If commentors propose different benchmarks, EPA is requesting examples to support the basis for such benchmarks.

Dated: February 10, 2022.

**Andrew D. Sawyers,**

*Director, Office of Wastewater Management, Office of Water.*

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2022-0200; FRL-9575-01-OGC]

### Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with the Clean Air Act, as amended (CAA or the Act), notice is given of a proposed consent decree in *Growth Energy v. Regan* (D.D.C. No. 1:22-cv-00347). On February 8, 2022, Plaintiff Growth Energy filed a complaint in the United States District Court for the District of Columbia alleging that the Environmental Protection Agency (EPA or the Agency) failed to perform non-discretionary duties in accordance with the Act to establish renewable fuel standards for calendar years 2021 and 2022. The proposed consent decree would establish deadlines for EPA to establish the 2021 and 2022 renewable fuel standards by June 3, 2022.

**DATES:** Written comments on the proposed consent decree must be received by *March 25, 2022*.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2022-0200, online at <https://www.regulations.gov> (EPA’s preferred method). Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID number for this action. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Additional Information about Commenting on the Proposed Consent Decree” heading under the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of

caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a delay in processing mail and faxes. Hand-deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

EPA continues to carefully and continuously monitor information from the CDC, local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Ryland Shengzhi Li, Air and Radiation Law Office (mail code), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone (202) 564-6787; email address [li.ryland@epa.gov](mailto:li.ryland@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Obtaining a Copy of the Proposed Consent Decree**

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2022-0200) contains a copy of the proposed consent decree.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

**II. Additional Information About the Proposed Consent Decree**

The proposed consent decree would establish a June 3, 2022, deadline for EPA to establish the 2021 and 2022 renewable fuel standards (also known as renewable fuel obligations). EPA is obligated to establish the renewable fuel standards under 42 U.S.C. 7545(o)(3)(B)(i). The Agency was statutorily obligated to establish the 2021 renewable fuel standards by November 30, 2020, and to establish the

2022 renewable fuel standards by November 30, 2021. EPA proposed the renewable fuel standards for 2021 and 2022 on December 7, 2021. See 86 FR 72436 (published December 21, 2021). Under the proposed consent decree, EPA must sign the final rule establishing the 2021 and 2022 renewable fuel standards by June 3, 2022.

The same rule proposing the 2021 and 2022 renewable fuel standards also proposed to revise the 2020 renewable fuel standards, which EPA had previously finalized in a separate rulemaking. 85 FR 7016 (February 6, 2020) (“2020 Rule”). Growth Energy and other parties have challenged the 2020 Rule in the D.C. Circuit. *Growth Energy v. EPA*, No. 20-1113 (D.C. Cir.) (consolidated under lead case *RFS Power Coalition v. EPA*, No. 20-1046 (D.C. Cir.)).

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

**III. Additional Information About Commenting on the Proposed Consent Decree**

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2022-0200, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa->

*dockets*. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA’s preferred method for receiving comments. The electronic public docket system is an “anonymous access” system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

**Gautam Srinivasan,**

*Associate General Counsel.*

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**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9446-01-OMS]

**Privacy Act of 1974; System of Records**

**AGENCY:** Office of Mission Support (OMS), Environmental Protection Agency (EPA).

**ACTION:** Notice of a modified system of records.

**SUMMARY:** The U.S. Environmental Protection Agency’s (EPA or Agency),