

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Environmental Protection Agency

Regulation/Package Title: Rescission of OAC Chapter 3745-72

Rule Number(s): OAC rules 3745-72-01 to 3745-75-08

Date: July 19, 2017

**Rule Type:**

New

Amended

5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

**1. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

Ohio Administrative Code (OAC) Chapter 3745-72 establishes the low Reid vapor pressure (RVP) fuel requirements. These rules control emissions of volatile organic compounds (VOCs) to help the Cincinnati and Dayton areas in their attainment of the national ambient air quality standard (NAAQS) for ozone. VOCs are precursor compounds which, along with nitrogen oxides (NOx), can form ozone. Ozone is one of the six criteria pollutants for which a NAAQS has been established under the Clean Air Act (CAA).

On April 7, 2017, U.S. EPA approved the removal of the low RVP fuel requirements in the Cincinnati and Dayton area. As these rules are no longer necessary, Ohio EPA proposes to rescind the rules in OAC Chapter 3745-72.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

ORC section 3704.03(E).

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

Section 110 of the CAA requires all states to develop a plan for attaining and maintaining the NAAQS. The rules in OAC Chapter 3745-72 were previously intended to assist Ohio in attaining and maintaining the NAAQS for ozone. As U.S. EPA has approved the removal of these requirements, the rules in OAC Chapter 3745-72 are no longer necessary.

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

Not applicable.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

Ohio EPA has determined the rules in OAC Chapter 3745-72 are no longer necessary.

**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Continued attainment and maintenance of the ozone NAAQS is, in part, a measure of the Ohio's strategy for attaining the NAAQS in general.

**Development of the Regulation**

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

Ohio EPA established an initial 30-day early stakeholder outreach period ending July 18, 2017. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 1,300+ members of Ohio EPA's electronic Interested Parties list for DAPC rulemaking. DAPC also posted the notice on our website and placed the notice in the Director's Weekly Review publication.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

One comment in support of the rescission was received from the American Petroleum Institute Ohio during the early stakeholder comment period.

**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

Not applicable.

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

These rules are no longer necessary because on April 7, 2017, U.S. EPA approved an anti-backsliding demonstration that included the substitution of equivalent or greater emissions from facilities in the Cincinnati and Dayton areas which permanently shut down or converted from coal to natural gas. More information about this demonstration is available at <http://epa.ohio.gov/dapc/sip/misc.aspx>.

**11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

Not applicable.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

Not applicable.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

Not applicable.

**Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. Identify the scope of the impacted business community;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

When this rule was first promulgated in 2007, Ohio EPA consulted with petroleum industry representatives and was informed that the increased price of low RVP gasoline was approximately 1 to 3 cents more per gallon versus regular gasoline. Ohio EPA recognized that the cost differential may fluctuate more depending on circumstances. As a commodity, Ohio EPA anticipated that this cost would rise and fall as the market demands.

However, actual price tracking performed by Ohio EPA in 2016 indicates an actual price differential of approximately 12 cents per gallon in the areas required to use low RVP fuel (Cincinnati and Dayton) as compared to similar metropolitan areas (Cleveland and Columbus). Rescission of these rules is anticipated to eliminate this price differential. Price tracking since U.S. EPA’s approval of the removal of the low RVP fuel requirements shows the price differential is now approximately 2 cents per gallon (through July 19, 2017).

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

Ohio EPA has determined there will be no adverse impact.

**Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

Not applicable.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

Not applicable.

**18. What resources are available to assist small businesses with compliance of the regulation?**

The following resources are available:

- Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments,

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

[CSIOhio@governor.ohio.gov](mailto:CSIOhio@governor.ohio.gov)

workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at <http://www.epa.ohio.gov/ocapp>.

- Ohio EPA also has a permit assistance web page ([http://www.epa.ohio.gov/dir/permit\\_assistance.aspx](http://www.epa.ohio.gov/dir/permit_assistance.aspx)) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.
- US. EPA Small Business Gateway also has information on environmental regulations for small businesses available at <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 800-368-5883.

Ohio EPA's DAPC maintains a SIP Development section through which SIP related rulemaking is performed. DAPC's rules coordinator, Paul Braun, the primary contact for this rulemaking, is available to answer questions. He can be reached by calling 614-644-3734 or by e-mail at [paul.braun@epa.ohio.gov](mailto:paul.braun@epa.ohio.gov).