

## Business Impact Analysis

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## **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.***

The Low Reid Vapor Pressure (RVP) Fuel Requirements have been in effect in designated areas of Ohio since November 11, 1994.

#### **Background**

Section 182(b)(1) of the Clean Air Act (CAA) required states to implement control programs which will reduce ozone causing air emissions by 15 percent in ozone non-attainment areas that are designated as moderate or a more serious designation. In Ohio, the areas that were required to adopt such programs were the Cleveland/Akron, Cincinnati, Toledo and Dayton metropolitan areas. A combination of control strategies were chosen that would achieve the necessary reductions in a cost-effective manner.

Section 172(c)(9) of the CAA requires that a contingency plan, which provides an additional three percent reduction in emissions, be required in the non-attainment areas. Contingency plans are implemented if violations of ozone standards are measured after the required control programs are implemented. The CAA required states to adopt rules for such contingency measures on or before November 15, 1994 for the 1-hour ozone standard. The State of Ohio determined that the Cleveland, Cincinnati and Dayton metropolitan areas should adopt, as one of their contingency measures, a low RVP gasoline program. The low RVP pressure gasoline program requires that all gasoline sold from June 1 until September 15 each calendar year in the Cleveland, Cincinnati and Dayton metropolitan area have a Reid vapor pressure of 7.8 pounds per square inch (p.s.i.) or less if this contingency measure needs to be implemented. The 1-hour standard has been revoked and replaced by the 8-hour standard for ozone. Ohio EPA will be revoking the language related to contingency measures.

In 2005 the Division of Air Pollution Control (DAPC) was assigned the task of evaluating alternative volatile organic compounds (VOC's) and Nitrogen Oxides (NOx) emission control options in order to find equivalent emission reductions to replace those lost by the termination of the e-check program (vehicle inspection) at the end of the 2005 ozone season in Cincinnati and Dayton, Ohio metropolitan area.

As a result, Ohio EPA amended OAC Rule 3745-72-02 in January, 2006 by requiring low Reid vapor pressure (RVP) gasoline be sold during the ozone season in designated counties located in the Cincinnati and Dayton, Ohio area in lieu of being employed just as a contingency measure. The control strategy chosen was evaluated primarily on cost-effectiveness and the ability to be implemented in a short time frame (i.e., the next ozone season which starts May 1, 2006).

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Specifically, low RVP gasoline may not exceed 7.8 RVP for standard gasoline and 8.8 RVP for ethanol blended gasoline as defined in OAC Rule 3745-72-07, "Special provisions for alcohol blends."

The specific rules are contained in the Ohio Administrative Code (OAC) Chapter 3745-72, "Low Reid Vapor Pressure Fuel Requirements" and may be found at the following website address: [http://epa.ohio.gov/dapc/regs/3745\\_72.aspx](http://epa.ohio.gov/dapc/regs/3745_72.aspx)

These rules provide control of emissions of VOC's from the fuels to help the Cincinnati and Dayton areas in their attainment of the national ambient air quality standard (NAAQS) for ozone. VOC's are precursor compounds which, along with NOx can form ozone. Ozone is one of the six criteria pollutants for which a NAAQS has been established under the Clean Air Act.

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

Rule Number	Authorizing Statute	Proposed Action
3745-72-01	3704.03(E)	Amended
3745-72-02	3704.03(E)	Amended
3745-72-03	3704.03(E)	Amended
3745-72-04	3704.03(E)	Amended
3745-72-05	3704.03(E)	Amended
3745-72-06	3745.03(E)	Amended
3745-72-07	3745.03(E)	Amended
3745-72-08	3745.03(E)	Amended

**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 are intended to assist Ohio in attaining and maintaining the NAAQS for ozone. VOC's are a precursor to ozone and can be used to control ozone levels.

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

The rules in this chapter do not exceed any federal requirements. The federal requirement which the rules in this chapter were designed to fulfill is the attainment and maintenance of the ozone NAAQS.

**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)?**

These rules are needed as part of Ohio's strategy for the attainment and maintenance of the ozone NAAQS. The public purpose of these rules is to assist Ohio in attaining the ozone NAAQS in the Cincinnati and Dayton, Ohio metropolitan area. Attainment of the NAAQS for ozone is mandated by the Clean Air Act and enforced by the U.S. EPA. If a state does not achieve attainment within a certain mandated timeframe, U.S. EPA can begin a sanctions clock which can lead to, among other things, loss of federal highway funds in non-attaining areas.

Effective September 15, 2009, U.S. EPA redesignated the Cincinnati and Dayton, Ohio metropolitan area to attainment of the 1997 8-hr ozone NAAQS (74 FR 47414). Under Section 110 of the Clean Air Act, any control strategies that a state enacts to achieve attainment of a standard must remain in force to assist in maintaining the standard. Because these rules are part of Ohio's control strategy to attain the standard, these rules must remain in effect.

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

The fact that the Cincinnati and Dayton, Ohio metropolitan area is now attaining and maintaining the ozone NAAQS is, in part, a measure of the success of these rules and 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 a 30-day early stakeholder comment period and requested comments from potentially affected parties. The comment period ended as of October 10, 2014. Ohio EPA, DAPC sent notice of our request for comments electronically to the 1,315 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.

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

No comments were received 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?**

In 2005 the Division of Air Pollution Control (DAPC) was assigned the task of evaluating alternative volatile organic compounds (VOC's) and Nitrogen Oxides (NOx) emission control options in order to find equivalent emission reductions to replace those lost by the termination of the e-check program (vehicle inspection) at the end of the 2005 ozone season in Cincinnati and Dayton, Ohio metropolitan area.

As a result, Ohio EPA amended OAC Rule 3745-72-02 in January, 2006 by requiring low Reid vapor pressure (RVP) gasoline be sold during the ozone season in designated counties located in the Cincinnati and Dayton, Ohio area in lieu of being employed just as a contingency measure. The control strategy chosen was evaluated primarily on cost-effectiveness and the ability to be implemented in a short time frame (i.e., by the start of the next ozone season which was May 1, 2006).

**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?**

The rules in OAC chapter 3745-72 are a single part of a larger plan for attaining and maintaining the ozone NAAQS in Ohio. The plan includes rules in several chapters of the Administrative Code including, among others, OAC chapter 3745-14, 3745-21, 3745-23, 3745-25, 3745-31, 3745-72, 3745-80, 3745-109, and 3745-112. The rules in these chapters form the basis of Ohio's SIP.

**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.***

The rules in this chapter are performance based regulations. The rules set limits for gasoline sold during the ozone season which must be met.

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

Ohio EPA reviewed our own regulations and performed a search of regulation from other agencies to determine if duplication was being made. To our knowledge, Ohio EPA is not duplicating another existing Ohio regulation.

**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.**

These rules have been in place as a contingency measure since November, 1994 and specifically required during the ozone season in designated counties located in the Cincinnati and Dayton, Ohio metropolitan area since January, 2006 due to the termination of the e-check program. Periodic audits are conducted at gasoline loading racks to ensure that low RVP gasoline is loaded on gasoline delivery trucks making delivery's to the affected counties.

**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.**  
*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 Reid vapor pressure gasoline was approximately 1 to 3 cents more per gallon versus regular gasoline. Ohio EPA recognizes that the cost differential may fluctuate more depending on circumstances. As a commodity, Ohio EPA anticipates that this cost will rise and fall as the market demands. Ohio EPA does not anticipate any impact on the economic development of the affected counties. The increased cost of a gallon of gas is reasonably low and the total annual cost would be a function of how much gas is purchased by an individual.

Ohio EPA acknowledges that gasoline stations at locations that border counties where the sale of RVP gasoline is not required may experience a cost of compliance due to lost business that migrates across the border to lower cost, non-RVP fuel dispensing stations. The low RVP fuels program was promulgated as part of Ohio's plan to replace the automobile inspection and maintenance program (also known as E-Check) in the Dayton and Cincinnati area. As such, the rules are only effective in the counties that make up these metropolitan areas, thereby limiting the border effects to the borders of these counties. Ohio EPA could prevent some of the localized border issues by

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expanding the program statewide, however Ohio EPA would not implement the program statewide unless there is a specific need or requirement (such as to comply with a national ambient air quality standard). In addition, this would not address those counties bordering neighboring states, which Ohio EPA has no authority to regulate.

In October 2008, representatives from Ohio EPA conducted an inspection (record keeping audit of manifests) of ten bulk gasoline terminals in the Cincinnati and Dayton area that were subject to Ohio EPA's low RVP gasoline requirements. One of the results of this audit was the determination that adequate information is being kept by the facilities in the form of receipts and manifests to fulfill the recordkeeping requirements of these rules. As these manifests are kept anyway in the regular course of business, Ohio EPA does not recognize an increased cost of compliance with the recordkeeping requirements of these rules.

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

As mentioned above, these rules are a part of Ohio's strategies to attain the ozone NAAQS. It was necessary to attain this NAAQS as it is required under the Clean Air Act and can lead to potential fiscal sanctions if the standard is not attained.

Additionally, reducing emissions benefits the state by providing a cost savings and economic benefit to the citizens through reduced pollution. Not only does reducing pollution provide for better enjoyment of the state's resources through cleaner air but also reduces property damage caused by pollution; reduces illnesses and reduces health care costs. These results, while impossible to quantify, are indeed much greater than the costs of compliance with these regulations.

**Regulatory Flexibility**

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

The regulation affects anyone purchasing gasoline in the affected counties during the ozone season. The rule does not provide for an alternative form of compliance.

**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?**

Ohio EPA does not assign fines and penalties for first-time offenders, and prefers to obtain compliance through outreach first and, if needed, written notice of violations prior to any type of formal enforcement.

When formal enforcement is deemed necessary, Ohio Revised Code Section 3704.99 allows for fines of up to \$25,000 per day per violation. In determining the amount of a fine or penalty, Ohio EPA uses USEPA's Civil Penalty Policy for enforcement cases. The policy can be found here: <http://www2.epa.gov/enforcement/policy-guidance-publications>. USEPA's policy takes into account several factors such as harm/potential harm to the environment, economic benefit gained, size of violator, and length of time of the violations. Ohio EPA would not base a first time fine specifically for selling non-conforming gasoline on the maximum daily amount allowed under Ohio law. To date, Ohio EPA has not issued any fines or penalties for instances related to these rules.

#### **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, 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 Division of Air Pollution Control (DAPC) maintains a State Implementation Plan (SIP) Development section through which SIP related rulemaking is performed. DAPC rule writer Alan Harness, the primary contact for the Low RVP Fuel requirements in OAC Chapter 3745-72, is available to answer questions. He can be reached by calling 614-644-4838 or by e-mail at [alan.harness@epa.ohio.gov](mailto:alan.harness@epa.ohio.gov).