

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio EPA

Regulation/Package Title: Alternative Fuel Vehicle Grant Program Rules

Rule Number(s): 3745-49-53, 3745-49-54, 3745-49-55

Date: \_\_\_\_\_

**Rule Type:**

New

5-Year Review

Amended

Rescinded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.**

*Allows Ohio EPA to administer a one-time grant opportunity of \$5 million in funds from the Ohio Development Services Agency's Alternative Fuel Transportation Fund (Fund 5CG0) to*

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*support the conversion or replacement of large diesel or gasoline powered trucks to run on compressed natural gas, liquid natural gas, or propane.*

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

*ORC 122.076 and temporary language in Sub H.B. 390 of the 131<sup>st</sup> Ohio General Assembly.*

**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?**

*No.*

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

*N/A*

**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)?**

*Enabling legislation requires rulemaking to establish the grant program.*

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

*By successful awarding of \$5 million for eligible alternative fuel vehicle projects, and the successful completion of those projects.*

**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 posted a web page for the program at <http://epa.ohio.gov/oe/EnvironmentalEducation.aspx#131365076-alternative-fuel-vehicle-grants> 7/6/16 inviting questions and suggestions. Ohio EPA's diesel grant program administrator gave a brief presentation about plans for development of the AFV program to about 20 people attending ODOT's Transportation Planning Conference 7/26/16; to several hundred people attending Clean Fuels Ohio's Midwest Green Fleets conference 9/27/16; and to 12 members of the Mid-Ohio Regional Planning Commission's energy and air quality working group 11/29/16, all in Columbus. Stakeholder contacts from these presentations were added to Ohio EPA's combined Interested Parties list for three other grant programs*

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*related to reducing diesel emissions. An update on program development was emailed 1/6/17 to approximately 3,000 people on this diesel interested parties list. Questions received were used to develop an Early Stakeholder Outreach (ESO) fact sheet that was posted on the website 3/1/17 for a thirty-day informal public comment period. Notice of the Early Stakeholder Outreach comment period was emailed 3/1/17 to 20,355 addresses on a combined list of all stakeholders in all Ohio EPA programs.*

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

*Eleven comments were received during Early Stakeholder Outreach, all supportive of the program. Ohio EPA also considered additional comments submitted earlier from one organization, Clean Fuels Ohio, on 6/17/16. A responsiveness summary is included with this package. Several commenters recommended expanding the program or establishing funding preferences for specific geographic areas, sectors, fuels, or project types, in ways that Ohio EPA does not believe are authorized in the statute. Ohio EPA had requested comments on possibly declining to fund applications with a price quote more than 30% higher than the advertised rates or the average of quotes received from other applicants. Two comments were supportive of the intent, with one that was particularly helpful in pointing out some potential difficulties in implementation. Ohio EPA agrees, and is not including the proposed requirement in the grant application or proposed rules package.*

**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?**

*Ohio EPA reviewed similar grant programs in a dozen other states, including several suggested by stakeholders, and agrees that programs in Pennsylvania and Florida are the most applicable models we have used in designing the grant application form.*

**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?**

*Ohio EPA considered requirements in two federally-funded grant programs: the Diesel Emission Reduction Grant (DERG) program administered jointly by Ohio EPA and ODOT with Congestion Mitigation and Air Quality (CMAQ) funding that the Federal Highway Administration awards to ODOT, <http://epa.ohio.gov/oe/EnvironmentalEducation.aspx#131364252-diesel-emission-reduction-grants> ; and US EPA's national competitive grants and state allocation grants to Ohio EPA under the federal Diesel Emission Reduction Act (DERA) <https://www.epa.gov/cleandiesel>. Both federal programs require grant recipients to destroy the engine of old diesel vehicles that are being replaced with new clean diesel or alternative*

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*fueled vehicles with grant funds. While this ensures that older, more heavily polluting vehicles do not remain in service in Ohio or elsewhere, a requirement for old engine destruction is not authorized in the statute creating this Alternative Fuel Vehicle conversion grant program. The federal grant programs also include reporting requirements for grant recipients to demonstrate that grant-funded new vehicles are being operated in eligible areas for several years after purchase. The statute for this AFV grant program requires grant applicants to attest that the new vehicles will be operated at least half the time in Ohio, but does not authorize subsequent reporting requirements. Therefore, Ohio EPA is not including them in the program. The two federal programs both require applicants to generate an estimate of the emission reductions to be achieved by the proposed project, using US EPA's online Diesel Emission Quantifier (DEQ) tool. In Ohio EPA's experience with the DERG grant program, applicants have difficulty using this tool correctly. AFV grants will be awarded on a first-come, first-served basis, rather than based on the cost effectiveness of the emission reductions to be achieved. However, Ohio EPA would like to be able estimate and report in the aggregate the emission benefits of this one-time grant program. We are asking applicants to include in the application form only the engine-specific data (size, model year, gross vehicle weight rating, annual miles travelled) about the old and proposed new engine/vehicle, first to help Ohio EPA determine eligibility, and second, so that Ohio EPA can itself generate estimates of potential emission benefits using the DEQ tool.*

**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.**

*N/A*

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

*N/A. Because grants may be awarded to fleets in all 88 Ohio counties, this new program fills a gap that the two existing grant programs (DERG and DERA) are not reaching. Because the application and reporting requirements are simpler, it should be more attractive and easier for applicants to participate. Ohio EPA and stakeholders are pleased to have an additional funding opportunity available to assist owners of aging diesel- and gasoline-powered fleets make the transition to cleaner fuels.*

**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.**

*Because this is a one-time only funding opportunity, Ohio EPA is proposing to award grants on a first-come, first-served basis to applicants with projects deemed eligible by the Agency.*

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*We intend to advertise the availability of the program early and widely, as several commenters suggested, to ensure that prospective applicants have adequate time to assemble vendor quotes and complete their applications. We also intend to post a list of pending applications and a wait-list on the program website, in case some initially awarded projects do not move forward within a reasonable time frame, so that funds can be reallocated to other applicants from the wait list.*

### **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.*

*This is not a traditional regulation, but rather a grant program that public sector and private sector fleet operators may voluntarily apply to for funds to cover a portion of the cost (up to \$25,000 per vehicle) to replace or refurbish aging diesel- and gasoline-powered vehicles to run on cleaner fuels. Based on conversations with applicants to Ohio’s Diesel Emission Reduction Grant program, and administrators of the AFV grant or rebate programs in Florida and Pennsylvania, Ohio EPA believes that a typical grant applicant should plan to spend four to five hours to assemble the information and complete the grant application (not counting time waiting to receive a quote from a dealer or engine refurbisher).*

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

*N/A. Of the eleven comments received during Early Stakeholder Outreach, four identified positive impacts the program can have on their business, and one specifically noted no adverse impact on its business or the business of any of its affiliates. No indications of adverse impacts on business were received.*

### **Regulatory Flexibility**

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

*N/A. Ohio EPA is working to keep the application as streamlined and simple as possible for all grant applicants.*

**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?**

*N/A.*

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

*In addition to posting all program information on the program website, Ohio EPA intends to hold at least two public information sessions in different cities well before the grant application due date, in order to explain the application requirements and take questions. Ohio EPA will post answers to Frequently Asked Questions on the website. Staff in Ohio EPA's Division of Air Pollution Control and Office of Environmental Education will be available by phone and email to answer questions before and during the application period. Ohio EPA will work with associations such as Clean Fuels Ohio, Ohio Trucking Association, Ohio Township Association and the Ohio County Engineers Association to publicize the grant opportunity to their members.*