

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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Regulation/Package Title: Gas Pipeline Safety

Rule Number(s): Chapter 4901:1-16, O.A.C.

Revisions to:
4901:1-16-01, 4901:1-16-02, 4901:1-16-04, 4901:1-16-05,
4901:1-16-06, 4901:1-16-07, 4901:1-16-08, 4901:1-16-11,
4901:1-16-12, 4901:1-16-14, 4901:1-16-15.

Date: 10/31/2012

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☐ Rescinded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.

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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 proposed revisions to the rules in Chapter 4901:1-16, Ohio Administrative Code (O.A.C.), are in response to Am. Sub. S.B. 315, which amended Sections 4905.03 to 4905.04, and 4905.90 to 4905.96, Revised Code. The proposed revisions to Chapter 4901:1-16, O.A.C., would add or amend definitions for the terms gas gathering pipeline, gas gathering/processing plant pipeline operator, gas processing plant, gathering line, horizontal well, MAOP, Natural Gas Pipeline Safety Act, operator, processing plant gas stub pipeline, raw natural gas, raw natural gas liquids, and transmission quality gas. These terms are being defined in accordance with Am. Sub. S.B. 315, which amends Section 4905.90, Revised Code. In addition, the definition of transportation of gas has been amended to include the gathering, transmission, or distribution of gas by pipeline, or the storage of gas within this state. The adoption of the proposed revisions to the definitions would provide for an appropriate and clear understanding of the rules in Chapter 4901:1-16, O.A.C. An additional rule is being proposed for Chapter 4901:1-16, Administrative Code, which would be Rule 4901:1-16-15, O.A.C., for the effective regulation of gas gathering pipelines and processing plant stub pipelines. This additional rule would improve gas pipeline safety through regulation for appropriate design, construction, and operation of these pipelines.

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

The amendments to the rules in Chapter 4901:1-16, O.A.C., are in response to Am. Sub. S.B. 315, which amended Sections 4905.03 to 4905.04, and 4905.90 to 4905.96, Revised Code. The specific statutory authority for the changes in each rule is listed in the chart below.

Rule	Statutory Authority – Ohio Revised Code
4901:1-16-01 4901:1-16-02 4901:1-16-04 4901:1-16-05 4901:1-16-08 4901:1-16-11 4901:1-16-12 4901:1-16-15	4905.91 4905.911
4901:1-16-06 4901:1-16-07	4901.13

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- 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.**

The revisions in Chapter 4901:1-16, O.A.C., are being proposed in accordance with the state directive found in Am. Sub. S.B. 315 and are not intended to further enable enforcement of federal requirements. Chapter 4901:1-16, O.A.C., enables appropriate regulation of natural gas, including federal requirements found in the Natural Gas Pipeline Safety Act of 1968, 82 Stat. 720, 49 U.S.C.A. App. 1671 et seq., as amended, as well as rules adopted by the United States department of transportation pursuant to the Natural Gas Pipeline Safety Act of 1968. The one change being made that complies with a federal requirement is the change to the definition of Transportation of Gas. This change will bring the definition into conformity with the Natural Gas Pipeline Safety Act of 1968 and bring clarity in applying Am. Sub. S.B. 315.

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

The regulation includes provisions not specifically required by the federal government, but specifically required by the state of Ohio as found in Am. Sub. S.B. 315. While the change to the definition of Transportation of Gas brings the definition into conformity with the Natural Gas Pipeline Safety Act of 1968, it was done for the purpose of allowing stakeholders to appropriately apply Am. Sub. S.B. 315.

- 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)?**

The rules contained in this chapter prescribe gas pipeline safety and drug and alcohol testing requirements to protect the public safety, as well as procedures for the Commission to administer and enforce the gas pipeline safety code and the Natural Gas Pipeline Safety Act of 1968.

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

The rules contained in this chapter govern gas pipeline safety proceedings to investigate and determine an operator's compliance with the pipeline safety code, as well as to investigate and determine whether an operator's intrastate gas pipeline facility is hazardous to human life or property. This means the Commission will measure the success of this regulation in terms of positive results from investigations of pipeline facilities to ensure compliance with the gas pipeline safety code.

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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.**

The Commission conducted a workshop on August 16, 2012, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the commission's review of Chapter 4901:1-16, Administrative Code, is 12-2040-GA-ORD. The entry providing notice of the workshop was served upon all gas and natural gas companies in the state of Ohio, all competitive retail gas suppliers, the Ohio Gas Association, the Ohio Oil and Gas Association, and other interested persons, including members of the general public, who have subscribed to the Commission's gas pipeline industry electronic mail list. The Commission's gas-pipeline industry electronic mail list includes over 160 subscribers. Twenty individuals attended the workshop, including representatives from: Duke Energy, Dominion East Ohio, Vectren, Enervest, Chesapeake Energy/Midstream, XTO Energy, M3 Midstream, Ohio Petroleum Council, Markwest Energy, Columbia Gas, UTI, Ohio Gas Association, and Gatherco, Inc.

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

Recommendations were provided by stakeholders at the workshop in Case No. 12-2040-GA-ORD. Some of the recommendations are as follows:

- 1) It was recommended that the definitions section of Chapter 4901:1-16, O.A.C., be revised in accordance with Am. Sub. S.B. 315. This recommendation was adopted by incorporating the definitions in Am. Sub. S.B. 315 into Rule 4901:1-16-01, O.A.C.
- 2) It was recommended that any new definitions in Rule 4901:1-16-01, O.A.C., should duplicate the new statutory definitions provided in the Am. Sub. S.B. 315. This stakeholder recommendation was adopted with regards to proposed revisions to the definitions.
- 3) It was recommended at the workshop that the definitions of operator be clarified since there are different responsibilities for different types of operators. Furthermore, the definition of operator for purposes of Section 4905.911, Revised Code, should be different from the definition of operator for the rest of the rule. This recommendation was adopted by clearly defining the terms operator and gas gathering/processing plant pipeline operator in Rule 4901:1-16-01, O.A.C., of the proposed revisions to the O.A.C. A gas gathering/processing plant pipeline operator is defined as an any person that owns, operates, manages, controls, or leases, a gas gathering pipeline or a processing plant gas stub pipeline. A gas gathering/processing plant pipeline operator is not an operator as

defined in paragraph (P) of 4901:1-16-01, but a person may be both an operator and a gas gathering/processing plant pipeline operator.

- 4) It was recommended that the rules ensure that the definition of pipeline, which includes compressor units, meters, etc., is not applied to pipelines that are only subject to Section 4905.911, Revised Code. This was adequately addressed by the revisions to the proposed rules.

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?

No scientific data was taken into account. In adopting any changes to Chapter 4901:1-16, O.A.C., the Commission takes into account feedback from stakeholders and the general public to the rules in effect prior to the proposed changes. Stakeholder and public feedback can be made directly to the Commission by filing comments from such entities as the Ohio Consumers' Counsel, any gas or natural gas Company in the state of Ohio, any competitive retail gas supplier, the Ohio Gas Association, the Ohio Oil and Gas Association, any member of the general public, or any other entity. The language of Am. Sub. S.B. 315 was also taken into account.

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?

No alternatives were considered. No regulatory alternatives were considered because the rules were revised strictly to bring them into accordance with Am. Sub. S.B. 315, except for the change to the definition of Transportation of Gas, which was done not to bring the rules into accordance with Am. Sub. S.B. 315 but for the appropriate and clear application of Am. Sub. S.B. 315. The only discretionary changes were minor grammatical corrections to Chapter 4901:1-16, O.A.C., and the correction of the PUCO website to reflect the appropriate URL of www.puco.ohio.gov.

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.*

No performance-based regulations were considered. These were not considered because the rules were revised specifically to bring them into accordance with Am. Sub. S.B. 315.

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

The Commission has reviewed other Ohio regulations and found no duplicate. Furthermore, these changes are in response to the directives of the General Assembly through the adoption of Am. Sub. S.B. 315.

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.

The Commission's plan for implementation of the proposed changes to Chapter 4901:1-16, O.A.C., is for the Service Monitoring and Enforcement Division of the Commission to implement and adopt measures that will ensure consistent and predictable application of the regulation.

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;

The scope of the business community impacted by the proposed revisions to Chapter 4901:1-16, O.A.C., includes any business engaged in the operation, design, construction, installation, or inspection of gas lines or infrastructure. Any negative financial impact to the business community would be offset by an incrementally greater increase in safety and security of the operation, design, construction, installation, and inspection of the natural gas infrastructure of the state of Ohio.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The proposed revisions were drafted in an effort to minimize any adverse impact on business, while complying with the directives of the Ohio General Assembly in Am. Sub. S.B. 315. The proposed revisions are intended to improve the safety and operation of the natural gas infrastructure of the state of Ohio. One recognized adverse impact includes a potential short term adverse impact on business as a result of businesses complying with an unfamiliar and new regulation.

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.

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

The Commission did not make a determination that the regulatory intent justifies the adverse impact to the regulated business community; rather the Commission determined that, under Am. Sub. S.B. 315, it was required to incorporate the provisions amending Sections 4905.03 to 4905.04, and 4905.90 to 4905.96, Revised Code, into Chapter 4901:1-16, O.A.C.

Regulatory Flexibility

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

No, the rules do not provide any exemptions or alternative means of compliance. The rules address gas pipeline safety to ensure that intrastate gas pipeline facilities are not hazardous or dangerous. An exemption or alternative means of compliance would not be appropriate and could pose hazard or danger to the public.

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?

The revisions to Chapter 4901:1-16, O.A.C., are specifically to accommodate statutory changes made by Am. Sub. S.B. 315. The focus of the review process was not on seeking penalties for first-time paperwork offenses. Fines and penalties for violating Chapter 4901:1-16, O.A.C., may only be ordered by the Commission after notice and hearing. The Commission will fully comply with Section 119.14, Revised Code, and not seek to recover administrative fines or civil penalties on any small business for a first-time paperwork violation, unless such violation falls within one of the exceptions set forth in paragraph (C) of that section and without providing adequate due process to the small business.

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

The Commission works with small businesses to ensure compliance with the rules. In Commission Case No. 12-2040-GA-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to discuss potential revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact the Commission at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry.

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