

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
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Regulation/Package Title: Ohio Adm. Code Chapter 4901:1-16
Gas Pipeline Safety

Rule Number(s):

1. Amended Rules:

4901:1-16-01, 4901:1-16-02, 4901:1-16-04, 4901:1-16-05, 4901:1-16-06,
4901:1-16-07, and 4901:1-16-15

2. No Change Rules:

4901:1-16-03, 4901:1-16-08, 4901:1-16-09, 4901:1-16-10, 4901:1-16-11,
4901:1-16-12, 4901:1-16-13, and 4901:1-16-14

Date: 2/26/2014

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded

☒ No Change

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 revision of the rules in Ohio Adm.Code Chapter 4901:1-16 are made in accordance with R.C. 119.032 which requires all state agencies to conduct a review of their rules at least once every 5 years.

In this 5-year review of the rules, Staff recommends amendments to: incorporate a definition for leak detection equipment in Ohio Adm.Code 4901:1-16-01, to standardize the evaluation of leaks; update the reference to the code of federal regulation applicable to the version in effect as of the effective date of the Ohio Adm.Code 4901:1-16-02; and direct operators to revisit reclassified leaks 30 days after a repair to verify that the repair adequately supports reclassification of the leak at Ohio Adm.Code 4901:1-16-04. Further, the gas pipeline safety provisions at Ohio Adm. Code 4901:1-16-05 have been revised to include procedures for the abandonment of service lines that have been inactive and are unlikely to be used in the foreseeable future. The proposed revision to Ohio Adm. Code 4901:1-16-06 increases the minimum expenditure level for the submission of construction reports to better reflect current industry standards.

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

The amendments to the rules in Ohio Adm.Code Chapter 4901:1-16 are authorized consistent with R.C. 4901.13, 4905.03 to 4905.04, and 4905.90 to 4905.96. 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	4901.13
4901:1-16-04	4905.91
4901:1-16-05	4905.911
4901:1-16-06	
4901:1-16-15	

- 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 Ohio Adm.Code Chapter 4901:1-16 are being proposed consistent with the agency's 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 well as rules adopted by the United States department of transportation pursuant to the Natural Gas Pipeline Safety Act of 1968.

- 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.

- 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.

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 January 16, 2014, to receive feedback from interested stakeholders and the general public as a part of the review of Ohio Adm.Code Chapter 4901:1-16, Case No. 13-2237-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, the Ohio Petroleum Council and the Ohio Consumers' Counsel, 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 360 subscribers. Thirty-three individuals attended the workshop, including representatives from: Duke Energy, Dominion East Ohio, Vectren, XTO Energy, city of Hamilton, Ohio, Ohio Gas Company, Ohio Oil & Gas Association, KNG Energy, Columbia Gas, UTI, Ohio Gas Association, Ohio Consumers' Counsel, Flexpipe Systems, FlexSteel Pipeline, and Plastics Pipe Institute.

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. 13-2237-GA-ORD held on January 16, 2014. Some of the recommendations are as follows:

- 1) It was recommended that Ohio Adm.Code 4901:1-16-04(I)(1) be revised to permit operators to check temporary repairs to grade one (hazardous) leaks daily rather than every eight hours, as the rule currently requires, until a permanent repair is made. This recommendation was not incorporated into the proposed rules by Staff. Staff believes the recommendation unnecessarily increases the risk to the public.
- 2) It was recommended that Ohio Adm.Code 4901:1-16-06(A)(1) be revised to increase the expenditure level before a construction report is required to \$500,000 and apply only to the addition of mains. This stakeholder recommendation was adopted with regards to the increase in the expenditure level.
- 3) At the workshop, several commenters endorsed the recommendation that Ohio Adm.Code 4901:1-16-15 be clarified to indicate whether the materials that can be used for gas gathering lines /processing plant pipelines is limited to the materials in 49 C.F.R.

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192, or other materials, as approved by the Pipeline and Hazardous Materials Safety Administration (PHMSA) or the Commission pursuant to a motion for waiver. This recommendation is covered under Ohio Adm.Code 4901:1-16-02(E), which provides that the Commission may waive requirements of the chapter, other than a requirement mandated by statute, for good cause shown.

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 considered in the amendment of the rules or the measurable outcomes of the rules. In adopting revisions to Ohio Adm.Code Chapter 4901:1-16, O.A.C., the Commission takes into account feedback from stakeholders and the general public regarding the effectiveness and efficiency of the currently effective rules and how the rules can be improved. In addition to the workshop, stakeholder and public feedback can be made directly to the Commission by filing comments or 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 Petroleum Council, the Ohio Oil and Gas Association, any member of the general public, or any other entity.

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 as the rules in Ohio Adm.Code Chapter 4901:1-16 are to carryout federal and Ohio gas pipeline safety regulations.

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.

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 did not find any duplication of regulations.

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 is for the Service Monitoring and Enforcement Division 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 Ohio Adm.Code Chapter 4901:1-16 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 reduce, where feasible, or minimize any adverse impact on business, while maintaining the operational safety of the natural gas infrastructure of the state of Ohio. Affected businesses may incur additional costs to assess service lines and to abandon unsafe inactive service lines but the Staff does not believe that the impact is “adverse.” Staff believes this assessment can be incorporated into the operator’s current system evaluation process.

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.*

The rules have been reviewed in an effort to minimize any adverse impact on business, where feasible, while ensuring the public safety. Gas pipeline safety staff works with regulated entities to effectuate and minimize the cost of compliance. The

Commission expects that the amendment of Ohio Adm.Code 4901:1-16-06, which increases the expenditure levels before a construction report is required, to reduce the cost of compliance. The Commission recognizes affected businesses will incur costs to comply with the amendment of Ohio Adm.Code 4901:1-16-05, which introduces provisions for the abandonment of service lines. The Staff proposes a procedure for the abandonment of service lines to address public safety and property damage as a result of fire and explosions at vacant and abandoned properties.

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 the existing regulations and the proposed amendments to Ohio Adm.Code Chapter 4901:1-16 are essential but balanced to ensure the operational safety of the natural gas infrastructure and the citizens of the state of Ohio.

Regulatory Flexibility

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

No, there is not an exemption or alternative means of compliance for small businesses. With one exception (Ohio Adm.Code 4901:1-16-15), the rules in Ohio Adm.Code Chapter 4901:1-16 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. Accordingly, an exemption from compliance would not be appropriate and could pose hazard or danger to the public. In regard to the amendment to Ohio Adm.Code 4901:1-16-15, Staff proposes that the rule be amended to clarify, similar to federal regulations, applicants may file a motion for a waiver to demonstrate an alternative means to comply with the rule.

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 focus of the 5-year review process was not on seeking penalties for paperwork or first-time offenses. Fines and penalties for violating Ohio Adm.Code Chapter 4901:1-16 may only be ordered by the Commission after notice and hearing. The Commission will fully comply with R.C. 119.14 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 R.C. 119.14.

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. 12-2237-GA-ORD, interested stakeholders and the general public, including small businesses, were invited to participate in a workshop to discuss potential revisions to the rules, including addressing any negative effects on business. Small businesses may contact the Commission at any time and may comment on the proposed revisions during the comment period.