

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: _____ Public Utilities Commission of Ohio (PUCO) _____

Attention: Angela Hawkins, Legal Director

Phone: 614-466-0122 Fax: 614-728-8373

Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: _____ Gas Pipeline Safety _____

Rule Number(s): _____ 4901:1-16-02, 4901:1-16-05 _____

Date: _____ September 15, 2016 _____

Rule Type:

☐ New ☐ 5-Year Review ☐ No Change
☒ Amended ☐ Rescinded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. Please include the key provisions of the regulation as well as any proposed amendments.

In light of incidents involving oil and gas pipelines and other events under the jurisdiction of the Ohio Department of Natural Resources, Ohio Department of Commerce, Division of State Fire Marshal, and Ohio Environmental Protection Agency, the state of Ohio has determined that it is appropriate to develop a one-call

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emergency notification system to serve as a single point of contact to receive notice of incidents involving the oil and gas industry. On August 9, 2016, the Governor of Ohio issued Executive Order 2016-04K, which creates and implements the one-call emergency notification system for oil and gas related emergencies.

In order to effectuate the state's one-call emergency notification system, the Commission has determined that Ohio Adm.Code 4901:1-16-05(A) should be amended on an emergency basis pursuant to R.C. 111.15(B)(2). In the 120-day time period during which the emergency rule is in effect, the Commission has initiated a rulemaking proceeding to consider adoption of the amendment to Ohio Adm.Code 4901:1-16-05(A) on a permanent basis.

Along with the proposed permanent amendment of Ohio Adm.Code 4901:1-16-05(A), the Commission has also proposed an update to Ohio Adm.Code 4901:1-16-02(D), such that it incorporates recent changes to the Code of Federal Regulations, by amending the date specified in the rule.

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

| Rule | Statutory Authority - Ohio Revised Code |
|--------------|--|
| 4901:1-16-02 | 4905.91 |
| 4901:1-16-05 | 4905.91 |

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 amendments to Ohio Adm.Code Chapter 4901:1-16 are being proposed consistent with the Commission's regulation of natural gas pipelines and operators, 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 regulations in Ohio Adm.Code Chapter 4901:1-16 include provisions not specifically required by the federal government, but specifically required by the state of Ohio. The amendment of Ohio Adm.Code 4901:1-16-05(A) is being proposed consistent with Executive Order 2016-04K.

- 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 Ohio Adm.Code Chapter 4901:1-16 prescribe gas pipeline safety requirements to protect the public safety, as well as procedures for the Commission to administer and enforce the gas pipeline safety code. Further, the amendment of Ohio Adm.Code 4901:1-16-05(A) is being proposed consistent with Executive Order 2016-04K.

- 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. The Commission will measure the success of the regulation in terms of positive results from investigations of pipeline facilities to ensure compliance with the gas pipeline safety code. The Commission can also monitor any complaints that are made to its hotline by consumers, as well as information that is reported by operators.

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 25, 2016, 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 Ohio Adm.Code 4901:1-16-05(A) and 4901:1-16-02(D) is 16-1712-GA-ORD. The Entry providing notice of the workshop

was served upon all regulated natural gas companies, pipeline companies, certified retail natural gas service suppliers, Ohio Consumers' Counsel, Ohio Gas Association, Ohio Petroleum Council, Ohio Oil and Gas Association, American Petroleum Institute – Ohio, and the Commission's gas-pipeline list-serve.

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

The amendment of Ohio Adm.Code 4901:1-16-05(A) is being proposed consistent with Executive Order 2016-04K. At the workshop, five stakeholders addressed the changes to Ohio Adm.Code 4901:1-16-05(A). Two stakeholders commented in favor of the changes while three stakeholders offered minimal comments. All of the comments offered at the workshop questioning portions of the changes to Ohio Adm.Code 4901:1-16-05(A) were also filed as written comments with the Commission on September 2, 2016. Each of the written comments were responded to by the Commission in its Finding and Order issued on September 14, 2016. The Commission received no comments at any point regarding the proposed amendment of Ohio Adm.Code 4901:1-16-02(D).

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 rule or the measurable outcomes of the rule. In adopting revisions to Ohio Adm.Code 4901:1-16-05(A) and Ohio Adm.Code 4901:1-16-02(D), the Commission has taken into account feedback from stakeholders and the general public regarding the effectiveness and efficiency of the currently effective rule and how the rule can be improved. In addition to the workshop and written comments filed on September 2, 2016, stakeholder and public feedback can continue to be made directly to the Commission by filing public comments or through feedback 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, the American Petroleum Institute – Ohio, 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 implement 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.*

The rules in Ohio Adm.Code Chapter 4901:1-16 are performance-based only in the sense that, for example, they require that certain information be reported to the Commission. Primarily, the rules in Ohio Adm.Code Chapter 4901:1-16 are regulatory in nature as required by the Revised Code.

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.

Upon completion of the rule review process, the adopted changes to Ohio Adm.Code 4901:1-16-05(A) and Ohio Adm.Code 4901:1-16-02(D) were attached to the Commission's decision in Case No. 16-1712-GA-ORD and served upon all regulated natural gas companies, pipeline companies, certified retail natural gas service suppliers, Ohio Consumers' Counsel, Ohio Gas Association, Ohio Petroleum Council, Ohio Oil and Gas Association, American Petroleum Institute - Ohio, and the Commission's gas-pipeline list-serve. The opportunity for continued feedback and input from the regulated community always exists and better ensures that the implementation of the rules in the chapter will occur smoothly. The Commission's Service Monitoring and Enforcement Division implements measures to ensure consistent and predictable application of the regulations.

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 rules under review includes natural gas pipeline operators that are regulated by the Commission.

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 maintaining the operational safety of the natural gas infrastructure in the state of Ohio and implementing Executive Order 2016-04K.

Ohio Adm.Code 4901:1-16-05(A) requires that certain information must be reported to the Commission by regulated natural gas pipeline operators.

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.*

Any adverse impact from adoption of Ohio Adm.Code 4901:1-16-05(A) would be minimal and would result from a regulated entity failing to file the required post-incident written report. Further, before any consequence associated with failure to file the required report would be imposed, the regulated entity would have a full and fair opportunity to offer explanations as to why there should be no consequences for failure to file the required report. Thus, the rule has 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 impact in terms of time or expense will, in most instances, be small, if there is any impact at all.

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

The Commission believes that any business impacts resulting from the proposed revisions are expected to be positive impacts. Specifically, the proposed revisions

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identify a single point of contact that will increase efficiency and streamline the reporting process for the affected utilities saving them both time and money. Additionally, the Commission determined that the proposed amendment to Ohio Adm.Code 4901:1-16-05(A) is essential to implement Executive Order 2016-04K, but also balanced to ensure the operational safety of the natural gas infrastructure and the citizens of the state of Ohio. The Commission has worked with stakeholders to develop a rule that best serves these goals.

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. 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 a 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 amendment of Ohio Adm.Code Chapter 4901:1-16 is not focused 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 will 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 Staff works with small regulated companies to ensure compliance with the rules in all respects. In this rulemaking proceeding, all stakeholders and the general public have been invited to participate in the workshop, in order to provide the Commission Staff with potential revisions to Ohio Adm.Code 4901:1-16-05(A) and Ohio Adm.Code 4901:1-16-02(D) to minimize or eliminate any adverse effects on business. In addition to the opportunity to submit written comments on the proposed revisions during the written comment period, small businesses may contact the Commission at any time.

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