

Attachment B
Chapter 4901:1-16, Ohio Adm.Code
Gas Pipeline Safety
Case No.: 19-47-GA-ORD
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Common Sense Initiative

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Regulation/Package Title: Gas Pipeline Safety

Rule Number(s): 4901:1-16-01, 4901:1-16-02, 4901:1-16-03, 4901:1-16-04, 4901:1-16-05, 4901:1-16-06, 4901:1-16-07, 4901:1-16-08, 4901:1-16-09, 4901:1-16-10, 4901:1-16-11, 4901:1-16-12, 4901:1-16-13, 4901:1-16-14, 4901:1-16-15

Date of Submission for CSI Review: August 14, 2019

Public Comment Period End Date: September 27, 2019

Rule Type/Number of Rules:

X No Change/9 rules (FYR? Yes)

☐ New/ rules

☐ Rescinded/ rules (FYR?)

☐ X Amended/6 rules (FYR? Yes)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency,

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responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- ☐ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☐ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☒ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☐ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

2. Please briefly describe the draft regulation in plain language.
Please include the key provisions of the regulation as well as any proposed amendments.

The revisions of the rules in Ohio Adm.Code Chapter 4901:1-16 are made in accordance with R.C. 111.15(B) and 106.03(A), which require all state agencies conduct a review of their rules at least once every five years.

In this five-year review of the rules, Commission Staff recommends amendments to: update the effective date in Ohio Adm.Code 4901:1-16-02(D) for references to the United States Code or the Code of Federal Regulations to the version effective as of

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August 1, 2019; implement procedures for abandoning inactive service lines in Ohio Adm.Code 4901:1-16-04(J); correct a typographical error in Ohio Adm.Code 4901:1-16-04(I) and update Ohio Adm.Code 4901:1-16-04(I)(1) to include all below grade hazardous leaks; include the total mileage of gas gathering piping operated in Ohio and counties of operation in the requisite twenty-four-hour contact report required in Ohio Adm.Code 4901:1-16-05(D); and remove paragraph (B)(4) in Ohio Adm.Code 4901:1-16-05 to eliminate redundancy. Additionally, the proposed revision to Ohio Adm.Code 4901:1-16-06(B) requires two construction reports, as opposed to three, and includes the removal of paragraph (C) to eliminate redundancy. Furthermore, Ohio Adm.Code 4901:1-16-08(B) will allow Staff to make service via electronic mail. Lastly, the gas pipeline safety provisions of Ohio Adm. Code 4901:1-16-11(B) and (E) have been revised to increase the forfeiture amount from one thousand dollars to ten thousand dollars for settlement agreements that take effect immediately upon execution to be consistent with other Commission forfeiture amounts.

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

Rule	Statutory Authority – Ohio Revised Code
4901:1-16-01	4905.91
4901:1-16-02	4905.91
4901:1-16-03	4905.91
4901:1-16-04	4905.91
4901:1-16-05	4905.91
4901:1-16-06	4905.91
4901:1-16-07	4905.91
4901:1-16-08	4905.91
4901:1-16-09	4905.91
4901:1-16-10	4905.91
4901:1-16-11	4905.91
4901:1-16-12	4905.91
4901:1-16-13	4905.91
4901:1-16-14	4905.91
4901:1-16-15	4905.91

**4. 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.

5. 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.

6. 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 and the Natural Gas Pipeline Safety Act of 1968.

7. 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.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No. The revisions of the rules in Ohio Adm.Code Chapter 4901:1-16 are made in accordance with R.C. 111.15(B) and 106.03(A), which require all state agencies to conduct a review of their rules at least once every five years.

Development of the Regulation

9. 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 February 14, 2019, at the offices of the Commission, to receive feedback from interested stakeholders and the general public as part of the review of Ohio Adm.Code Chapter 4901:1-16. The case number for the Commission's review of Ohio Adm.Code Chapter 4901:1-16 is 19-47-GA-ORD. The Entry providing notice of the workshop was served upon all regulated gas, natural gas, and pipeline companies, the Ohio Consumers' Counsel, the Ohio Gas Association, the Ohio Oil and Gas Association, the Ohio Petroleum Council, the American Petroleum Institute - Ohio, all other interested persons of record, and the Commission's gas-pipeline list-serve. Approximately 20 individuals attended the workshop, including representatives from: the Ohio Gas Association, Vectren, Dominion Energy, UTI, North Coast Gas Transportation, Ohio Oil and Gas Association, Columbia Gas of Ohio (Columbia), and Duke-Energy. Additionally, there were several Ohio constituents in attendance as well as individuals from the Ohio House of Representatives.

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

At the February 14, 2019 workshop, Columbia provided testimony suggesting changes be made to: Ohio Adm.Code 4901:1-16-04(A) and (I)(1), 4901:1-16-06(A), and 4901:1-16-08(B). In response to Columbia's suggestions, Staff has incorporated Columbia's recommendations to Ohio Adm.Code 4901:1-16-04(I)(1) and 4901:1-16-08(B). Additionally, there were several Ohio constituents in attendance at the workshop who offered testimony; however, this testimony referred to a currently pending Ohio Power Siting Board Case No. 16-253-GA-BTX. The siting process of pipeline facilities in Ohio is separate from the Commission's review of the gas pipeline safety rules detailed in Ohio Adm.Code Chapter 4901:1-16. To that end, the Commission will consider all comments provided by the stakeholders in attendance at the workshop, as well as all comments that are filed in the docket regarding the review of Ohio Adm.Code Chapter 4901:1-16.

11. 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, the Commission will take into account feedback from stakeholders and the general public regarding the effectiveness and efficiency of the currently effective rules and how the rule can be improved. In addition to the workshop, stakeholder and public feedback can be made directly to the Commission by filing comments or through comments from such entities as the Ohio Consumers' Counsel, any gas or natural gas company in the state of Ohio, any competitive retail natural 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.

12. 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.

13. 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.

14. 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.

15. 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, any changes made to Ohio Adm.Code Chapter 4901:1-16 will be attached to the Commission's decision in Case No. 19-47-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 Department implements measures to ensure consistent and predictable application of the regulations.

Adverse Impact to Business

16. 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. 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 impact in terms of time or expense will, in most instances, be small, if there is any impact at all. The Commission recognizes affected businesses will incur costs to comply with the amendment of Ohio Adm.Code 4901:1-16-04, 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.

17. 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

18. 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.

19. 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 five-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 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.

20. 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, including small businesses, were invited to participate in the 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 submit written comments on the proposed revisions during the public comment period.