



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

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### Business Impact Analysis

Agency, Board, or Commission Name: Public Utilities Commission of Ohio (PUCO)

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Ohio Coal Research and Development Rate

Rule Number(s): Chapter 4901:1-12

Date of Submission for CSI Review: March 24, 2021

Public Comment Period End Date: May 7, 2021

Rule Type/Number of Rules:

New/\_\_\_ rules

No Change/ 9 rules (FYR? X)

Amended/\_\_\_ rules (FYR? \_\_\_)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

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 regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing

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**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.**

The proposed rules in Ohio Adm.Code Chapter 4901:1-12 are in accordance with the state of Ohio's five-year rule review procedures. R.C. 111.15 and 106.03 require all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The rules in Ohio Adm.Code Chapter 4901:1-12 concern the Ohio coal research and development rates of gas and natural gas companies regulated by the Commission.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

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Rule	Statutory Authority – Ohio Revised Code
4901:1-12-01	4905.304
4901:1-12-02	4905.304
4901:1-12-03	4905.304
4901:1-12-04	4905.304
4901:1-12-05	4905.304
4901:1-12-06	4905.304
4901:1-12-07	4905.304
4901:1-12-08	4905.304
4901:1-12-09	4905.304

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.*

No rule in Ohio Adm.Code Chapter 4901:1-12 implements a federal requirement or is being adopted or amended to enable Ohio to obtain or maintain approval to administer or enforce a federal law.

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

Not applicable.

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)?**

R.C. 4905.304 requires the Commission, once every six months, to examine Ohio coal research and development costs incurred by a gas or natural gas company. R.C. 4905.304 also requires the Commission to adopt rules that require periodic reports, audits, and hearings and establish investigative procedures for the purposes of the section; allow recovery on a uniform basis per unit of sale of the Ohio coal research and development costs incurred by a gas or natural gas company; and require the reporting of such data by gas and natural gas companies as the Commission considers necessary for the purposes of the section. In accordance with the statute, Ohio Adm.Code Chapter 4901:1-12 includes rules that address these requirements.

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

The Commission can monitor any complaints that are made to its hotline by consumers, as well as the information that is reported by gas and natural gas companies.

**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.*

Not applicable.

**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 3, 2021, via remote access technology to receive feedback from interested stakeholders and the general public. The case number for the Commission's review of Ohio Adm.Code Chapter 4901:1-12 is 21-19-GA-ORD. The Entry providing notice of the workshop was served upon all regulated gas and natural gas companies, the Ohio Consumers' Counsel, the Ohio Gas Association, the Ohio Oil and Gas Association, and the Commission's gas-pipeline list-serve. One representative of one natural gas company attended the workshop.

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

No comments were provided by the stakeholder in attendance at the workshop.

**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 directly provided or considered. In adopting any changes to the rules, the Commission takes into account all feedback from stakeholders and the general public. Stakeholder feedback can be made directly to Commission Staff from residential, commercial, and industrial consumers; the Ohio Consumers' Counsel; gas and natural gas companies; and many other interested stakeholders.

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**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 alternative regulations were recommended. The Revised Code grants the Commission the power and jurisdiction to supervise and regulate public utilities. Additionally, R.C. 4905.304 requires the Commission to examine Ohio coal research and development costs incurred by a gas or natural gas company and to adopt rules that require periodic reports, audits, and hearings and establish investigative procedures for the purposes of the section; allow recovery on a uniform basis per unit of sale of the Ohio coal research and development costs incurred by a gas or natural gas company; and require the reporting of such data by gas and natural gas companies as the Commission considers necessary for the purposes of the section. Accordingly, the Commission adopted rules that it considers best suited to meet these requirements. The Commission will, however, consider any alternative proposals put forth in comments or reply comments filed by stakeholders and the general public.

**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 are performance-based only in the sense that, for example, they require that certain information related to Ohio coal research and development cost recovery be reported to the Commission. Primarily, the rules in Ohio Adm.Code Chapter 4901:1-12 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?**

Certain entities, including all regulated gas and natural gas companies, the Ohio Consumers' Counsel, the Ohio Gas Association, and the Ohio Oil and Gas Association, were included on the list of stakeholders that were notified regarding the workshop held at the Commission on February 3, 2021. None of these entities has indicated that any provision of Ohio Adm.Code Chapter 4901:1-12 duplicates any other Ohio regulation.

**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 4901:1-12 will be attached to the Commission's decision in Case No. 21-19-GA-ORD and

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served upon all regulated gas and natural gas companies, the Ohio Consumers' Counsel, the Ohio Gas Association, the Ohio Oil and Gas Association, 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.

### **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; and**

The scope of the business community impacted by the rules under review includes gas and natural gas companies that are regulated by the Commission.

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

In their current form, the rules in Ohio Adm.Code Chapter 4901:1-12 require that certain information must be reported to the Commission by regulated gas and natural gas companies.

**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 Commission does not anticipate any adverse impact. Under the current rules, the impact in terms of time or expense will, in most instances, be small, if there is any impact at all. For example, certain information must be reported to the Commission. It must be noted, however, that the rules apply only in the event that a gas or natural gas company seeks to recover the costs associated with an approved coal research and development project.

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

The Commission is vested with the power and jurisdiction to supervise and regulate public utilities. Additionally, R.C. 4905.304 requires the Commission to examine Ohio coal

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research and development costs incurred by a gas or natural gas company and to adopt rules that require periodic reports, audits, and hearings and establish investigative procedures for the purposes of the section; allow recovery on a uniform basis per unit of sale of the Ohio coal research and development costs incurred by a gas or natural gas company; and require the reporting of such data by gas and natural gas companies as the Commission considers necessary for the purposes of the section. The Commission has worked with stakeholders to develop rules that best serve these goals. As mentioned above, the Commission received no comments at the workshop held on February 3, 2021.

### **Regulatory Flexibility**

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

No. However, R.C. 4905.304 requires the Commission to examine Ohio coal research and development costs incurred by a gas or natural gas company and to adopt rules that require periodic reports, audits, and hearings and establish investigative procedures for the purposes of the section; allow recovery on a uniform basis per unit of sale of the Ohio coal research and development costs incurred by a gas or natural gas company; and require the reporting of such data by gas and natural gas companies as the Commission considers necessary for the purposes of the section. Additionally, proposed Ohio Adm.Code 4901:1-12-04(C) would provide that the Commission may, upon an application or a motion filed by a party, waive any requirement of the chapter, other than a requirement mandated by statute, for good cause shown.

**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?**

Not applicable.

**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 were invited to participate in the workshop held on February 3, 2021, in order to provide the Commission Staff with potential revisions to the rules to minimize or eliminate any adverse 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 once the proposed revisions are filed in the case docket.