



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Development

Rule Contact Name and Contact Information: Latisha Chastang, Deputy Chief, Office of Community Assistance: latisha.chastang@development.ohio.gov 614-728-2821

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

OAC 122:5-3-02 Percentage of Income Payment Plan (PIPP) Program Federal Poverty Guidelines Update

Rule Number(s): 122:5-3-02

Date of Submission for CSI Review: 8/26/2022

Public Comment Period End Date: 9/2/2022

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? __)

Amended/ X 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Rescinded/___ rules (FYR?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 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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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.**

On July 27, 2022, Governor DeWine signed Executive Order 2022-12D to increase the threshold to qualify for PIPP from 150% of the federal poverty guidelines to 175%. You can find the release on that announcement [here](#). After the order, Development filed an emergency rule. We are now amending the same rule to keep the change beyond the 120 days allowed with the emergency rule. With an increased income threshold, more Ohioan's are eligible for assistance and can get help to alleviate any financial burden caused by high energy costs.

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.**

ORC 4928.53

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?**

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

If yes, please briefly explain the source and substance of the federal requirement.

No

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

N/A

- 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 goal of the PIPP program is to provide an opportunity for income-eligible Ohioans to maintain electric service at an affordable price. After reviewing the revised utility rates from the utility companies, the cost of electricity has increased which will impact ratepayer's monthly cost. Increasing the federal poverty guidelines to 175% will increase the number of customers eligible for the program to assist with keeping utility bills affordable.

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

Success will be determined by the following metrics:

1. Increase in the number of PIPP participants who enroll for the program for the first time;
2. Increase in the number of PIPP participants who make their payments in-full and on-time;
3. Increase in the number of PIPP participants who have had their arrearages reduced to \$0.00;
4. Decrease in arrearages owed to the utilities or to the Universal Service Fund;
5. Decrease in the number of PIPP participants' electric service disconnections due to non-payment;
6. Decrease in the number of PIPP participants receiving disconnection notices for their electric bills;
7. Decrease in the number of PIPP participants using the Winter Reconnect Order; and
8. Decrease in the number of PIPP participants using the HEAP Winter Crisis funds.

- 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?**

No

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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.

Development worked with the Public Utilities Commission of Ohio (PUCO) to expand eligibility as the PUCO has rules for gas PIPP and Development has rules for electric PIPP. However, Development administers the entire PIPP program so both rules need to align.

Energy Assistance Providers and utility companies were notified of Governor DeWine's Executive Order and the emergency rule on July 27, 2022.

Development will post the amended rule and BIA on Development's website for stakeholder comment from 8/26/2022- 9/2/2022. In order to not have a lapse in eligibility criteria, Development must file the amended rule with JCARR by 9/9/2022.

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

Input from stakeholders will be provided as received. We have not received input since stakeholders were notified on July 27, 2022 of the change.

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?

Development used the utility rate cases in order to determine the modification to the federal poverty guidelines. We also used PUCO metrics report and Development's monthly customer information report providing utility data on payment and disconnection frequencies. This data was reviewed to determine how to best achieve the goals of the program.

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 considered; with increasing utility rates, Development wanted to help additional low-income Ohioans with the increase in eligibility proposed.

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. A performance-based regulation is not appropriate in this instance. The rules must be designed to ensure compliance with the PIPP program.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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

The original regulation for the PIPP program was implemented in 1983 and administered by the Public Utilities Commission of Ohio. In 1999, the Ohio legislature in Senate Bill 3, moved the administration of the electric PIPP program to the Department of Development. Since that time the PUCO has administered the gas PIPP program rules (Chapter 4901:1-18) and Development has administered the electric PIPP Plus rules. Development worked with the PUCO to ensure that the two sets of rules on eligibility aligned.

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.

Development's Office of Community Assistance (OCA) will implement the rules in a consistent and predictable application of the regulation for both gas utility customers and electric utility companies. Development will work to ensure the EDUs and Energy Assistance Providers follow the process accordingly for expanded eligibility of PIPP customers. Information in the application process has already been updated to increase the federal poverty guidelines to 175% and things have been running smoothly since the emergency rule was filed.

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 provisions of OAC 122:5-3-02 apply to regulated utility companies, and the rates that are paid into the Universal Service Fund (USF) are paid for by Ohio's regulated electric utility ratepayers. In 2022, 51 agencies administered PIPP Plus for 213,995 (as of August 16, 2022) electric customers.

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

The primary identified business community is the electric utility companies. The proposed revision to OAC 122:5-3-02 may impact the identified business community to the extent that there is a time cost involved in compliance with the rules if the utility companies need to program their billing systems to incorporate the proposed rule revision. Further, there are recovery procedures, if the utility company determines the proposed rule revision impacts the utility company's recovery of expenses. There may be additional storage capacity to retain added customer record information. In addition, while unlikely, there may be nominal costs associated with updates to revise bill inserts or messages to residential utility bills.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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 impact in terms of time will, in most instances, be minimal, as utility companies already adhere to OAC Chapter 122:5-3-02 and the proposed revisions are unlikely to add any additional significant burden on business.

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

With Governor DeWine’s executive order, the amended rule will make the increase in PIPP eligibility long term. With rising utility costs, more eligible Ohioans will have energy assistance access. The long-term impacts of this change will have a positive effect on the regulated business community and its customers.

Regulatory Flexibility

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

No. Development will work with impacted businesses to ensure compliance with the rules.

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?

N/A

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

Development will send information updates to impacted stakeholders, and is always available to assist with any questions on the PIPP program.