

Ohio Adm.Code 4901:5-33
Transportation Fuel Emergency
Case Number: 22-59-AU-ORD
Page 1 of 8



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

Business Impact Analysis

Agency, Board, or Commission Name: Public Utilities Commission of Ohio

Rule Contact Name and Contact Information:

Jeff Jones, Legal Director Ph: 614-466-0463; <<Jeffrey.jones@puco.ohio.gov>>

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

Transportation Fuel Emergency

Rule Number(s): 4901:5-33-01; 4901:5-33-02; 4901:5-33-03; 4901:5-33-04

Date of Submission for CSI Review: January 17, 2023

Public Comment Period End Date: January 27, 2023

Rule Type/Number of Rules:

New/ 1 rules

No Change/ 1 rules (FYR? x)

Amended/ 2 rules (FYR? x)

Rescinded/ 1 rules (FYR? x)

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

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

CSIPublicComments@governor.ohio.gov

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.

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.

Chapter Ohio Adm.Code 4901:5-33 concerns transportation suppliers and the actions the Commission and those suppliers may take during an energy emergency. Specifically, this chapter outlines actions the Commission may take during an emergency where a supplier has insufficient product to provide for all consumers' priority use.

Any and all amendments to these proposed rules are made pursuant to Ohio Rev. Code 121.951(A)(1) that requires state agencies to reduce their total number of regulatory restrictions.

- 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.**

Ohio Rev. Code 4935.03

- 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.

- 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)?**

Pursuant to R.C. 4935.03, the Commission must adopt rules, with the approval of the governor, specifying appropriate measures to be taken at each level or for each type of energy emergency as necessary to protect the public health or safety or prevent unnecessary or avoidable damage to property.

Chapter 4901:5-33 outlines the actions the Commission and suppliers of transportation fuel may take during energy emergencies.

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

The Commission can monitor complaints that are made to its hotline by consumers and feedback from transportation fuel suppliers and the fuel source advisor council.

- 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.

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 March 10, 2022, 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 Chapters 4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and 4901:5-37 is 22-59-AU-ORD. The Entry providing notice of the workshop was served upon all regulated electric and natural gas companies; ReliabilityFirst Corporation; PJM Interconnection, LLC; Ohio Consumers' Counsel; Ohio Coal Association; Ohio Gas Association; Ohio Rural Electric Cooperatives, Inc.; Office of Energy and Redevelopment, Ohio Department of Development; Ohio Electric Utility Institute; Ohio Propane Gas Association; Ohio Petroleum Marketers & Convenience Store Association; Ohio Oil and Gas Association; Ohio Petroleum Council; Ohio Emergency Management Agency; Ohio Homeland Security; Ohio Trucking Association; Ohio Railroad Association; Ohio Telecom Association; Ohio Cable Telecommunications Association; Ohio Manufacturers' Association; Ohio Municipal League; Ohio Environmental Council; Ohio State Bar Association; Legal Aid Societies of Cleveland, Columbus, Cincinnati, Dayton, and Toledo; and the Commission's electric-energy, gas-pipeline, and transportation list-serves. The workshop was held virtually and while no one registered to offer comments nor did any interested stakeholder offer any comments at the workshop, there were attendees present.

- 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 stakeholders 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.

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, including that such utilities furnish products and services in a manner that promotes protection, welfare, and safety of the public. Additionally, the Revised Code directs the Commission to adopt rules, with the approval of the governor, defining various foreseen types and levels of energy emergency conditions for critical shortages or interruptions in the supply of electric power, natural gas, coal, or individual petroleum fuels and specifying appropriate measures to be taken at each level or for each type of energy emergency as necessary to protect the public health or safety or prevent unnecessary or avoidable damage to property. Accordingly, the Commission adopted rules that it considers best suited to meet these goals. 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 the fuel shortage, state set-aside program, or critical situation be reported to consumers and the Commission. Primarily, the rules in Ohio Adm.Code Chapter 4901:5-33 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 state entities, including the Ohio Consumers' Counsel, Ohio Department of Development, Ohio Emergency Management Agency, and Ohio Homeland Security, were included on the list of stakeholders that were notified regarding the workshop held by the Commission on March 10, 2022. None of these entities has indicated that any provision of Ohio Adm.Code Chapter 4901:5-33 duplicates any rule of those entities or any other existing 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 Chapters 4901:5-33 will be attached to the Commission's decision in Case No. 22-59-AU-ORD and served upon all regulated electric and natural gas companies; ReliabilityFirst Corporation; PJM Interconnection, LLC; Ohio Consumers' Counsel; Ohio Coal Association; Ohio Gas Association; Ohio Rural Electric Cooperatives, Inc.; Office of Energy and Redevelopment, Ohio Department of Development; Ohio Electric Utility Institute; Ohio Propane Gas Association; Ohio Petroleum Marketers & Convenience Store Association; Ohio Oil and Gas Association; Ohio Petroleum Council; Ohio Emergency Management Agency; Ohio Homeland Security; Ohio Trucking Association; Ohio Railroad Association; Ohio Telecom Association; Ohio Cable Telecommunications Association; Ohio Manufacturers' Association; Ohio Municipal League; Ohio Environmental Council; Ohio State Bar Association; Legal Aid Societies of Cleveland, Columbus, Cincinnati, Dayton, and Toledo; and the Commission's electric-energy, gas-pipeline, and transportation list-serves. The opportunity for continued feedback and input from the regulated community always exists and better ensures that the implementation of the rules in these chapters will occur smoothly in the event of an imminent or declared emergency.

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 include transportation fuel suppliers.

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

Compliance with Ohio Adm.Code Chapter 4901:5-33 may require some employee time and associated expense, as the chapter outlines the requirements for transportation fuel suppliers to prevent and mitigate impacts of a critical fuel emergency situation.

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 due to the proposed revisions to Ohio Adm.Code Chapters 4901:5-33.

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 related to a fuel shortage or critical situation must be reported to the Commission and consumers. It must be noted, however, that the rules apply only in the event of an actual or imminent fuel emergency or critical situation.

17. 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.

The Commission is vested with the power and jurisdiction to supervise and regulate public utilities, including that such utilities furnish products and services in a manner that promotes protection, welfare, and safety of the public. Additionally, the Revised Code directs the Commission to adopt rules, with the approval of the governor, defining various foreseen types and levels of energy emergency conditions for critical shortages or interruptions in the supply of electric power, natural gas, coal, or individual petroleum fuels and specifying appropriate measures to be taken at each level or for each type of energy emergency as necessary to protect the public health or safety or prevent unnecessary or avoidable damage to property. 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 March 10, 2022.

Regulatory Flexibility

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

No. Ohio Adm.Code Chapter 4901:5-33 addresses transportation fuel suppliers' communication with the Commission and actions taken during imminent fuel emergency or a critical situation, which are clearly essential matters. Thus, any alternative means of compliance would not be appropriate.

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 March 10, 2022, 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.