

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Power Siting Board (OPSB)
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Regulation/Package Title: Enforcement Investigation

Rule Number(s): 4906-7-01 through 4906-7-19

Date: May 1, 2013

Rule Type:

☒ New

☐ Amended

☒ 5-Year Review

☒ Rescinded

☐ No Change

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.

The proposed revisions to the rules in Chapter 4906-7, Ohio Administrative Code (O.A.C.), define the purpose and scope of Chapter 4906-7, O.A.C., and make other revisions to the rules providing for the requirements for the filing of an accelerated certificate application. The adoption of the proposed revisions to the rules in Chapter 4906-7, O.A.C., would also bring the rules into conformance with the requirements of Am. Sub. S.B. 315 (S.B. 315).

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

The amendments to the rules in Chapter 4906-7, O.A.C., are being proposed pursuant to Section 119.032, Revised Code, which requires 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 Ohio Power Siting Board (Board) is authorized to adopt the proposed rules pursuant to Chapter 4906, Revised Code, which governs the rules and regulations promulgated by the Board. Furthermore, on June 11, 2012, the governor of the state of Ohio signed into law S.B. 315 amending provisions contained in Chapter 4906, Revised Code. The Board intends to combine its five-year review of the rules with its review of possible revisions to the rules resulting from the enactment of S.B. 315.

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.

No rule in this chapter implements a federal requirement or is being adopted or amended to enable Ohio to obtain or maintain approval to administer or enforce a federal requirement.

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

Not applicable.

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 revisions to Chapter 4906-7, O.A.C., include the adoption of Rule 4906-7-1, which is titled Purpose and Scope. Rule 4906-7-1(A), O.A.C., would indicate that the purpose of Chapter 4906-7, O.A.C., is to set forth the rules for enforcement investigations and payment of forfeitures.

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 matters before the Board pursuant to Chapter 4906 of the Revised Code. The rules in Chapter 4906-7, O.A.C., are provisions enforcement investigations and payment of forfeitures. The outputs to Chapter 4906-7, O.A.C., include improved compliance with Section 4906.98 of the Revised Code and the Board's rules.

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 Board conducted a workshop on August 13, 2012, at the offices of the Public Utilities Commission to receive feedback from interested stakeholders and the general public in Case No. 12-1981-GE-BRO. The entry providing notice of the workshop was served upon all electric distribution utilities, all gas and natural gas local distribution companies, the Ohio Gas Association, the Ohio Oil and Gas Association, and all applicants who have filed cases with the Board in the last five years. The Board enjoyed significant stakeholder participation at the workshop.

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

Recommendations were provided by stakeholders at the workshop in Case No. 12-1981-GE-BRO. Some of the recommendations are as follows:

- (1) It was recommended that low-impact substation expansions be submitted under construction notice or letter of notification filings to simplify the process for low-impact projects.
- (2) It was recommended that the rules have some provisions to define how a route location is defined.
- (3) It was recommended that wetland and stream data be permitted to be filed electronically because the amount of information provided is quite large.
- (4) It was recommended that applicants potentially be granted the opportunity to provide upfront payment of fees with construction notice and letter of notification submissions.
- (5) It was recommended that a general protective order rule be adopted to replace the general discovery rules that currently exist.
- (6) It was recommended that the matrices contained in the rules be rewritten.
- (7) It was recommended that Rule 4906-7-16, O.A.C., be reviewed for relevancy.
- (8) It was recommended that the number of hard copies of applications that must be submitted be reduced from the 25 copies that the rules currently require.
- (9) It was recommended that in letter of notification and construction notice applications where a party intervenes, the case be shifted to a full application instead of being withdrawn and resubmitted by the applicant as a full application.

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 taken into account. In adopting any changes to Chapter 4906-7, O.A.C., the Board takes into account feedback from stakeholders and the general public to the rules in effect prior to the proposed changes. Stakeholder and public feedback can be made directly to the Board by filing comments from such entities as electric distribution utilities, gas and natural gas local distribution companies, the Ohio Gas Association, the Ohio Oil and Gas Association, applicants who have filed cases with the Board, members of the general public, or any other entity. The language of S.B. 315 was also taken into account.

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?

The operation of the Board is specifically provided for in Chapter 4906 of the Revised Code, and the promulgation of rules governing the siting process is specifically provided for in Section 4906.03, Revised Code, thus regulatory alternatives were not available.

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.

No performance-based regulations were considered. The rules in Chapter 4906-7, O.A.C. dictate the rules for enforcement investigations and payment of forfeitures. Moreover, the rules are specifically mandated by Section 4906.03, Revised Code, and, thus, performance-based regulation is inappropriate.

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

The Board has reviewed other Ohio regulations and found no duplication. Furthermore, these rules have been adopted pursuant to Chapter 4906, Revised Code, and S.B. 315.

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.

Chapter 4906-7, O.A.C., sets forth the rules governing enforcement investigations and payment of forfeitures. The Board intends to present Chapter 4906-7, O.A.C., for comment from stakeholders to ensure that it will be applied consistently and predictably for the regulated community. The provisions of Chapter 4906-7, O.A.C., have been in effect for some time without complaints about inconsistent application of the Chapter. The proposed changes are not substantive with respect to the application of the Chapter.

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;

Chapter 4906-7, O.A.C. provides guidance to entities seeking to site facilities within the state of Ohio. Only entities seeking certificates to build facilities in Ohio will be affected by these rules. Effects to business include continuation of current application fees and the time it takes an applicant to comply with the application requirements.

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

Costs of compliance with Chapters 4906-1 to 4906-7, O.A.C., will be lower than costs under the current rules, thus any adverse impact will decrease pursuant to adoption of the proposed rules. More facilities will be able to receive certificates through the accelerated application process. Certain facilities will be permitted to be combined into one application. Rules for both standard and accelerated certificate applications have been clarified and streamlined. Electronic filing of applications will be permitted, which will reduce the costs of duplication and distribution of large paper applications.

Costs vary greatly depending on the nature of the facility that is seeking certification, but costs include environmental studies, preparation of the application, service and distribution of the application, participation in public meetings and hearings, and the Board's costs for reviewing the application, which are billed to the applicant on an hourly basis for actual time spent on the case. All upfront application fees are applied to the billed hours of work on the case, and any surplus is refunded to the applicant.

- 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.*

There is no representative business for purposes of quantifying any adverse impact from the regulation. It is nearly impossible to estimate costs to the regulated population or a representative business. Costs are billed on a case-by-case basis and depend greatly on the nature of the facility and the particular issues of the case. Costs tend to be lower for facilities that have less environmental impact or occupy a smaller area of land. Furthermore, cases with less opposition will have fewer costs by avoiding the need for further hearings and appeals.

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

Chapter 4906-7, O.A.C. is required by Section 4906.03, Revised Code. Therefore, these rules are required by law and were drafted to minimize adverse impacts on businesses.

Regulatory Flexibility

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

Chapter 4906-7, O.A.C. reflects the legislative intent of Section 4906.03, Revised Code, and provides for the certificating of new facilities in Ohio. Furthermore, the revisions to Chapter 4906-7, O.A.C., are being proposed pursuant to S.B. 315. The certificating of electric transmission facilities and gas pipelines in Ohio is not an activity typically undertaken by an entity that would be defined as a small business.

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 Board only assesses penalties for violations of certificates, which occur after an applicant has begun construction of a facility.

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

The Board actively works with applicants, and parties who have been granted certificates, to assure compliance with the Board's rules and the terms and conditions of their certificates. Construction of a certificated facility is not an activity typically undertaken by a small business.