

Chapter 4901:1-19, Ohio Adm.Code  
Alternative Rate Plan; Exemptions  
Case No. 22-812-GA-ORD



## 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:**

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

**Ohio Adm.Code Chapter 4901:1-19 Alternative Rate Plan; Exemptions**

**Rule Number(s):** 4901:1-19-01, 4901:1-19-02, 4901:1-19-03, 4901:1-19-04, 4901:1-19-05, 4901:1-19-06, 4901:1-19-07, 4901:1-19-08, 4901:1-19-09, 4901:1-19-10, 4901:1-19-11, 4901:1-19-12, 4901:1-19-13, 4901:1-19-14, and 4901:1-19-15.

**Date of Submission for CSI Review:** October 5, 2022

**Public Comment Period End Date:** October 28, 2022

**Rule Type/Number of Rules:**

New/      rules

Amended/ 10 rules (FYR? No)

No Change/ 5 rules (FYR? No)

Rescinded/      rules (FYR?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.

*Please include the key provisions of the regulation as well as any proposed amendments.*

Ohio Adm.Code Chapter 4901:1-19 governs the filing, consideration, and implementation of applications made pursuant to R.C. 4929.04 to exempt any commodity sales service or ancillary service of a natural gas company from the provisions of R.C. Chapters 4905, 4909, and 4935; the filing and consideration of an application by a natural gas company pursuant to R.C. 4929.04 to exit the merchant function; and the filing and consideration of an application made by a natural gas company pursuant to R.C. 4929.05 to request approval of an alternative rate plan.

The proposed amendments either fix typographical errors or are made pursuant to 121.951(A)(1), which requires state agencies to reduce their total number of regulatory restrictions.

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**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.**

| <b>Rule</b>   | <b>Statutory Authority –<br/>Ohio Revised Code</b> |
|---|--|
| 4901:1-19-01,<br>4901:1-19-02,<br>4901:1-19-03,<br>4901:1-19-10<br>4901:1-19-14 | 49029.10<br>4929.04<br>4929.05                     |
| 4901:1-19-04,<br>4901:1-19-05,<br>4901:1-19-09,                                 | 4929.10<br>4929.04                                 |
| 4901:1-19-06  | 4929.10<br>4929.04<br>4929.05 and 4929.051         |
| 4901:1-19-07,<br>4901:1-19-12   | 4929.10<br>4929.05                                 |
| 4901:1-19-08  | 4929.10<br>4929.04<br>4929.05<br>4929.07           |
| 4901:1-19-11  | 4929.10<br>4929.04<br>4929.05<br>4929.08           |
| 4901:1-19-13  | 4929.10<br>4929.05<br>4929.054                     |
| 4901:1-19-15  | 4929.10<br>4903.24                                 |

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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 this chapter implements a federal requirement or is being adopted or amended to enable the state to obtain or maintain approval to administer and enforce federal law or to participate in a federal program.

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

These rules do not exceed any federal requirement.

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 purpose of this regulation is to provide a clear and consistent process for the filing and review of applications made pursuant to R.C. 4929.04 to exempt any commodity sales service or ancillary service of a natural gas company from the provisions of R.C. Chapters 4905, 4909, and 4935; applications by natural gas companies pursuant to R.C. 4929.04 to exit the merchant function; and applications made by a natural gas companies pursuant to R.C. 4929.05 to request approval of an alternative rate plan. Additionally, R.C. 4929.10 requires the Commission to adopt rules to carry out R.C. Chapter 4929.

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

The Commission will measure the success of this regulation by the Commission's ability to review and approve or disapprove an application for an exemption, to exit the merchant functions, or for an alternative rate plan in a timely and thorough manner.

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.*

None of the proposed rules are being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931.

### **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.*

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The Entry issuing these rules for comment was served upon all regulated natural gas companies, the gas-pipeline industry service list, the Ohio Gas Association, Ohio Petroleum Council, the Ohio Oil and Gas Association, and the Ohio Consumers' Counsel; the Entry is also publicly filed in Case No. 22-812-GA-ORD.

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

The Commission expects that stakeholder input, if any, will be submitted via filed comments.

**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 used to develop Ohio Adm.Code Chapter 4901:1-19.

**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 or recommended. The regulations contained in Ohio Adm.Code Chapter 4901:1-19 present, in many ways, market-based alternatives to fully-regulated natural gas pricing structures provided for within the Revised Code.

**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.***

No performance-based regulations were considered. The rules in Ohio Adm.Code Chapter 4901:1-19 are based upon statutory requirements found in R.C. 4929.04 and R.C. 4929.05, neither of which provides for performance-based regulation.

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

This chapter is unique in that the rules provide a procedure to allow natural gas utilities to pursue alternatives to traditional regulation and to permit natural gas marketers to propose alternative approaches that would further allow for market-driven pricing structure(s) for natural gas. We are thus assured that there is no duplication with any existing 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.**

Commission Staff conducts a review of each application filed pursuant to this chapter to ensure that any application complies with the applicable filing requirements. Further, the attorney examiner assigned by the Commission to each application ensures that the process set forth in the rules for the Commission's review of the application is followed.

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## **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**

Ohio Adm.Code Chapter 4901:1-19 impacts natural gas companies, as defined in R.C. 4929.01(G).

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

Any adverse impact takes the form of the time and expense associated with compliance. For example, the rules may require a natural gas company to spend time for compliance with certain filing requirements, but they also provide procedures through which that natural gas company can pursue alternative options to traditional regulation.

**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.*

Staff works extensively with all regulated companies toward rule compliance involving the least amount of time and expense. Any adverse impact in terms of dollars and hours to comply should, in most instances, be minimal. The rules have been reviewed with an eye on minimizing any adverse impact on natural gas companies while still providing a flexible, streamlined application procedure.

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

The proposed revisions to Ohio Adm.Code Chapter 4901:1-19 are expected to lessen adverse business impacts because the purpose of the revisions is to reduce the number of regulatory restrictions. That said, Staff continues to believe that the need for clear and consistent filing requirements and procedures for the thorough review of applications filed pursuant to R.C. 4929.04 and R.C. 4929.05 justifies the continued presence of compliance requirements within these rules.

## **Regulatory Flexibility**

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

Yes. Ohio Adm.Code 4901:1-19-04, which governs exemptions filed under R.C. 4929.04, requires that a hearing be conducted on an application filed by a natural gas company with fifteen thousand or more customers. However, holding a hearing on an application by a

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natural gas company with fewer than fifteen thousand customers is not required; instead, a hearing is within the Commission's discretion.

**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?**

Commission Staff works cooperatively with regulated entities, and no fines or penalties are contemplated under this chapter. To the extent it is applicable, the Commission will fully comply with R.C. 119.14.

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

The rules, application forms, and other applicable regulations are accessible on the natural gas industry page on the Commission website. All applicants, large and small, are permitted to electronically file applications with the Commission via the website. The Commission also produces an apples-to-apples chart that enables small business that wish to shop for a marketer to compare the prices offered by various marketers making offers in the business's service area. This ensures that small business owners have full access to pertinent information.