



## Common Sense Initiative

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### Business Impact Analysis

**Agency Name:** Public Utilities Commission of Ohio (PUCO)

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**Regulation/Package Title:** Governmental Aggregators and Retail Natural Gas Suppliers (CRNGS) - Certification

**Rule Number(s):** 4901:1-27-01, 4901:1-27-02, 4901:1-27-03, 4901:1-27-04, 4901:1-27-05, 4901:1-27-06, 4901:1-27-07, 4901:1-27-08, 4901:1-27-09, 4901:1-27-10, 4901:1-27-11, 4901:1-27-12, 4901:1-27-13, 4901:1-27-14

**Date of Submission for CSI Review:** September 8, 2021

**Public Comment Period End Date:** October 22, 2021

**Rule Type/Number of Rules:**

☐ New/ rule (FYR?     )

☐ X Amended/ 5 rules (FYR? Yes)

☐ X No Change/ 9 rule (FYR? Yes)

☐ Rescinded/ rule (FYR?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 rules 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 4901:1-27 sets forth the requirements for competitive retail natural gas service CRNGS provider, retail natural gas aggregator, retail natural gas broker, and governmental aggregator certification. Specifically, this chapter outlines the application process, the standards for application approval or denial, applicant responsibility for financial security, requirements for certification renewal, notification requirements for material changes in certificate information, transfer or abandonment of a certificate, and the Commission's authority to suspend, rescind, or conditionally rescind a certificate.

The proposed changes to Ohio Adm.Code 4901:1-27-04 include requiring CRNGS providers or governmental aggregators with expired certificates, who wish to refile for certification, to file a new application under the existing certificate case number, the amendment allows such a filing to extend the previous certificate up to 90 days. Under Ohio Adm.Code 4901:1-27-08,

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an applicant may file certain additional documentation under seal without filing a corresponding motion for protective order. Under Ohio Adm.Code 4901:1-27-09, if renewal applications are filed fewer than 30 days prior to the expiration date of the certificate then the existing certification will automatically extend 31 days, plus the amendment gives CRNGS providers and governmental aggregators a longer period of time during which it can file such renewal. Under Ohio Adm.Code 4901:1-27-12, the amendment clarifies that an abandonment application should be filed under the existing certification case. Furthermore, the proposed removal of Ohio Adm.Code 4901:1-27-13(F) accommodates/reconciles the rule changes made in Case No. 19-1429-GA-ORD. This was the most recent five-year rule review case of Ohio Adm.Code 4901:1-13 for the minimum gas service standards, which became effective on August 5, 2021. The above rule review moved Ohio Adm.Code 4901:1-27-13(F) to Ohio Adm.Code 4901:1-13-14(J). Therefore, the proposed change to Ohio Adm.Code 4901:1-27-13(F) was made to avoid duplication within different rule chapters.

**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.**

	Statutory Authority – O.R.C.	Amplifies – O.R.C.
Rule 4901:1-27-01	4929.10, 4929.20	4929.01, 4929.20
Rule 4901:1-27-02	4929.10, 4929.20	4929.01, 4929.20
Rule 4901:1-27-03	4929.10, 4929.20	4929.20 , 4929.30, 4905.04
Rule 4901:1-27-04	4929.10, 4929.20	4929.20
Rule 4901:1-27-05	4929.10, 4929.20	4929.20 , 4929.22
Rule 4901:1-27-06	4929.10, 4929.20	4929.20 , 4929.23, 4905.10, 4911.18, 4929.21
Rule 4901:1-27-07	4929.10, 4929.20	4929.20
Rule 4901:1-27-08	4929.10, 4929.20	4929.20
Rule 4901:1-27-09	4929.10, 4929.20	4929.20
Rule 4901:1-27-10	4929.10, 4929.20	4929.20
Rule 4901:1-27-11	4929.10, 4929.20	4929.20
Rule 4901:1-27-12	4929.10, 4929.20	4929.20
Rule 4901:1-27-13	4929.10, 4929.20	4929.20 , 4905.26
Rule 4901:1-27-14	<u>4929.10, 4929.20</u>	<u>4929.20 , 4905.26</u>

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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 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)?**

The rules in this chapter establish the standards required by R.C. 4929.20 for applicants to be certified as CRNGS providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators.

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

The Commission monitors complaints from the applicant CRNGS providers, retail natural gas aggregators, retail natural gas brokers, governmental aggregators, and their customers through staff interaction and the Commission's call center.

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 October 3, 2018, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for

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the commission's review of Ohio Adm.Code 4901:1-27, O.A.C., is 17-1845-GA-ORD. The entry providing notice of the workshop was served upon all investor-owned natural gas utilities in the state of Ohio, all competitive retail natural gas service providers in the state of Ohio, and the GAS-PIPELINE industry list-serve. The workshop was held in conjunction with other electric and natural gas industry rules workshops, including the rules in Chapters 4901:1-10, 4901:1-21, 4901:1-23, 4901:1-24, 4901:1-28, 4901:1-29, 4901:1-30, 4901:1-31, 4901:1-32, 4901:1-33, and 4901:1-34.

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

At the workshop held on October 3, 2017, comments were offered by various stakeholders. Some recommendations from stakeholders have been incorporated in the proposed rules. The Commission will also consider any comments or reply comments addressing this rule chapter that are filed by stakeholders and the general public in Case No. 17-1845-GA-ORD.

**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 specific scientific data was used to develop this chapter. Rather, the certification of CRNGS providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators is required by R.C. 4929.20(A) and has been in effect since 2002; thus, Staff's experience and the input of stakeholders was utilized to refine the rules.

**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?**

The certification of CRNGS providers, retail natural gas aggregators, retail natural gas brokers, and governmental under Ohio Adm.Code 4901:1-27 is specifically mandated by R.C. 4929.20, thus regulatory alternatives were not available.

**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 certification of CRNGS providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators under Ohio Adm.Code 4901:1-27 is specifically mandated by R.C. 4929.20, thus, performance-based regulation is inappropriate.

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

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The certification of CRNGS providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators under Ohio Adm.Code 4901:1-27 is specifically mandated by Section 4929.20, Revised Code, thus the determination as to whether R.C. 4929.20 duplicated an existing Ohio regulation was performed by the Legislative Service Commission.

**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.**

Ohio Adm.Code 4901:1-27 is required by R.C. 4929.20 and has been in effect since 2002 without complaints about inconsistent application of the Chapter.

**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 4901:1-27 establishes minimum managerial, technical, and financial standards for CRNGS providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators and provides reasonable financial assurances to protect consumers and natural gas companies from default; reflecting the requirements of R.C. 4929.20.

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

CRNGS companies that are subject to Commission jurisdiction must devote time to complete the certification application required under this chapter, as well as renewal applications. Furthermore, Ohio Adm.Code 4901:1-27-13, each CRNGS provider is subject to an annual assessment, pursuant to R.C. 4905.10 and 4911.18. This specific rule also requires, pursuant to R.C. 4905.10, 4911.18, and 4929.23(B), CRNGS must file an annual report based upon its intrastate gross receipts sale of hundred cubic feet of gas. Ohio Adm.Code 4901:1-24-14 notes that, pursuant to the tariff filed with the Commission in accordance with R.C. 4929.20(A), a natural gas company may require a CRNGS provider to issue and maintain financial security with the natural gas company to protect the natural gas company in the event the CRNGS provider fails to deliver contracts retail general service to a customer.

**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*

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***“representative business.” Please include the source for your information/estimated impact.***

Ohio Adm.Code 4901:1-27 has been in effect since 2002 and reflects the requirements of R.C. 4929.20. The hours and costs for an applicant to compile a certification application including ownership and organizational descriptions, managerial experience and capabilities, balance sheets, credit ratings, and other relevant financial information will vary depending upon the size of the supplier and the service areas in which supplier intends to operate. See the answer to Question 40(b) for the other types of potential impacts, the costs of which will depend on each specific CRNGS provider.

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

Ohio Adm.Code 4901:1-27 reflects the requirements of R.C. 4929.20. Any proposed changes to the Chapter are primarily substantive, nor contrary to legislative intent.

**Regulatory Flexibility**

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

Ohio Adm.Code 4901:1-27 reflects the legislative intent of R.C. 4929.20 and provides for a streamlined certification requirements for all CRNGS providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators to do business in Ohio.

**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?**

The focus of Ohio Adm.Code 4901:1-27 is to ensure that CRNGS providers, retail natural gas aggregators, retail natural gas brokers, and governmental aggregators are certified to do business in Ohio. The focus is not on seeking penalties for first-time paperwork offenses. Fines or penalties for violation of this chapter may only be ordered by the Commission after notice and hearing. The Commission will fully comply with R.C. 119.14 and not seek to recover administrative fines or civil penalties on any small business for a first-time paperwork violation, unless such violation falls within one of the exceptions set forth in paragraph (C) of that section and without providing due process to the small company.

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

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 17-1845-GA-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential

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revisions to the rules to decrease or eliminate any negative effects on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry. Also, Commission Staff routinely works with small businesses to assist such companies with Ohio Adm.Code 4901:1-27 compliance.

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