

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE AMENDMENT OF  
OHIO ADM.CODE CHAPTER 4901:1-16  
REGARDING GAS PIPELINE SAFETY.

CASE NO. 16-1712-GA-ORD

### ENTRY

Entered in the Journal on August 12, 2016

#### I. SUMMARY

{¶ 1} The Commission amends Ohio Adm.Code 4901:1-16-05(A) on an emergency basis, in order to effectuate the state's one-call emergency notification system. The Commission also schedules a workshop for August 25, 2016, and directs that comments on Ohio Adm.Code 4901:1-16-05(A) and Ohio Adm.Code 4901:1-16-02(D) be filed by September 2, 2016.

#### II. DISCUSSION

{¶ 2} R.C. 4905.91 directs the Commission to adopt rules to carry out R.C. 4905.90 to 4905.96 regarding natural gas pipeline safety.

{¶ 3} The Commission adopted Ohio Adm.Code 4901:1-16-05(A) requiring operators to report natural gas pipeline service failures and incidents to the chief of the Commission's gas pipeline safety section within two hours of discovery. An incident is defined in Ohio Adm.Code 4901:1-16-01(K) as an event that involves a release of gas from an intrastate gas pipeline facility that results in death, personal injury requiring inpatient hospitalization, unintentional estimated gas loss of three million cubic feet or more, or estimated property damage of \$50,000 or more. As recently as March 21, 2015, an incident occurred in Upper Arlington, Ohio, in which eight homes were rendered uninhabitable and more than 20 homes were damaged.<sup>1</sup>

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<sup>1</sup> *In re Columbia Gas of Ohio, Inc.*, Case No. 15-1351-GA-GPS, Finding and Order (Jan. 20, 2016).

{¶ 4} In addition to the reporting of such incidents to the Commission, oil and gas events under the jurisdiction of the Ohio Department of Natural Resources, the Ohio Department of Commerce, Division of State Fire Marshal, and the Ohio Environmental Protection Agency may also require notification or reporting. The state of Ohio has, therefore, determined that it is appropriate to develop a one-call emergency notification system to serve as a single point of contact to receive notice of incidents involving the oil and gas industry. On August 9, 2016, the Governor of Ohio issued Executive Order 2016-04K, which creates and implements the one-call emergency notification system for oil and gas related emergencies.

{¶ 5} In order to effectuate the one-call emergency notification system and the more expeditious reporting under that system, the Commission finds that paragraph (A) of Ohio Adm.Code 4901:1-16-05 should be amended, as delineated in the attachment to this Entry, on an emergency basis pursuant to the provisions of R.C. 111.15(B)(2). The amendment of Ohio Adm.Code 4901:1-16-05(A) on an emergency basis is necessary for the immediate enhanced preservation of the health and safety of the citizens of Ohio.

{¶ 6} Pursuant to R.C. 111.15, rules adopted on an emergency basis will be effective for 120 days after filing with the Secretary of State, the Legislative Service Commission, and the Joint Committee on Agency Rule Review. During this time period while the emergency rule is in effect, the Commission will conduct a rulemaking proceeding to consider the amendments to Ohio Adm.Code 4901:1-16-05(A) being permanently adopted on an expedited basis through this Entry.

{¶ 7} Additionally, Ohio Adm.Code 4901:1-16-02(D) provides that each citation in Ohio Adm.Code Chapter 4901:1-16 that is made to a section of the United States Code or a regulation in the Code of Federal Regulations (C.F.R.) is intended, and shall serve, to incorporate by reference the particular version of the cited matter that was

effective on July 30, 2014. At this time, the Commission finds that, along with the proposed permanent amendment of Ohio Adm.Code 4901:1-16-05(A), it is appropriate to consider an update to Ohio Adm.Code 4901:1-16-02(D), such that it incorporates recent changes to the C.F.R., by amending the date specified in the rule.

{¶ 8} On January 10, 2011, the Governor of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.

{¶ 9} In addition, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must conduct a business impact analysis (BIA) regarding the rules. If there will be an adverse impact on business, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Further, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative office the draft rules and the BIA.

{¶ 10} In order to elicit feedback on Ohio Adm.Code 4901:1-16-05(A), as amended, and proposed Ohio Adm.Code 4901:1-16-02(D) and to allow stakeholders to propose their own revisions to these paragraphs for consideration, a workshop will be scheduled for August 25, 2016, at 1:30 p.m. at the offices of the Commission, Hearing Room 11-B, Columbus, Ohio. Any interested stakeholder that does not participate in the workshop may file formal comments with the Commission as delineated below.

{¶ 11} The Commission requests comments from interested persons for the limited purpose of assisting in the review of paragraph (A) of Ohio Adm.Code 4901:1-16-05, as amended, and proposed paragraph (D) of Ohio Adm.Code 4901:1-16-02. Comments on Ohio Adm.Code 4901:1-16-05(A), as amended, and proposed Ohio Adm.Code 4901:1-16-02(D) attached to this Entry and/or on the BIA should be filed by September 2, 2016.

### III. ORDER

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That Ohio Adm.Code 4901:1-16-05(A) be adopted on an emergency basis in accordance with Paragraph 5. It is, further,

{¶ 14} ORDERED, That a workshop be scheduled for August 25, 2016, in accordance with Paragraph 10. It is, further,

{¶ 15} ORDERED, That all interested persons shall file comments on Ohio Adm.Code 4901:1-16-05(A), as amended, and proposed Ohio Adm.Code 4901:1-16-02(D) by September 2, 2016, in accordance with Paragraph 11. It is, further,

{¶ 16} ORDERED, That a copy of this Entry, with the rules and the BIA, be submitted to CSI, in accordance with R.C. 121.82. It is further,

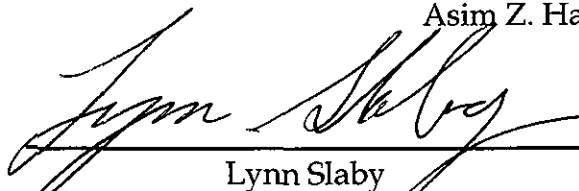
{¶ 17} ORDERED, That notice of this Entry be sent to the gas-pipeline list serve. It is, further,

{¶ 18} ORDERED, That a copy of this Entry and the attachments be served upon all regulated natural gas companies, pipeline companies, certified retail natural gas service suppliers, Ohio Consumers' Counsel, Ohio Gas Association, Ohio Petroleum Council, Ohio Oil and Gas Association, American Petroleum Institute - Ohio, and all other interested persons of record.

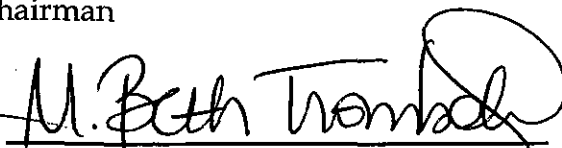
## THE PUBLIC UTILITIES COMMISSION OF OHIO



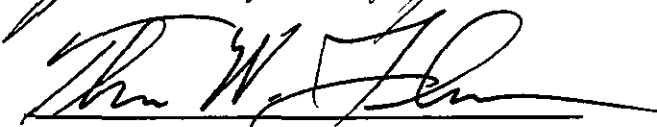
Asim Z. Haque, Chairman



Lynn Slaby



M. Beth Trombold



Thomas W. Johnson

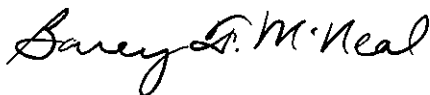


M. Howard Petricoff

JRJ/SJP/sc

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AUG 12 2016

Barcy F. McNeal  
Secretary

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**4901:1-16-02 Purpose and scope.**

(A) The rules contained in this chapter prescribe:

- (1) Gas pipeline safety and drug and alcohol testing requirements to protect the public safety.
- (2) Procedures for the staff to administer and enforce the pipeline safety code.

(B) This chapter also governs gas pipeline safety proceedings to:

- (1) Investigate and determine an operator's or a gas gathering/processing plant pipeline operator's compliance with applicable sections of the pipeline safety code.
- (2) Investigate and determine whether intrastate gas pipeline facilities are hazardous to human life or property, as provided in 49 U.S.C. 60112, as effective on the date referenced in paragraph (D) of this rule.
- (3) Review settlement agreements and stipulations by the staff and operators or by staff and gas gathering/processing plant pipeline operators.
- (4) Issue and enforce compliance orders.
- (5) Issue emergency orders without notice or prior hearing when immediate action is needed to protect the public safety.
- (6) Assess forfeitures.
- (7) Direct the attorney general to seek enforcement of commission orders, including orders assessing forfeitures, and to seek appropriate remedies in court to protect the public safety.

(C) All operators and gas gathering/processing plant pipeline operators shall comply with the applicable rules of this chapter.

(D) Each citation contained with this chapter that is made to a section of the United States code or a regulation in the code of federal regulations is intended, and shall serve, to incorporate by reference the particular version of the cited matter that was effective on July 30, 2014 August 1, 2016.

(E) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

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**4901:1-16-05 Notice and reports of service failures and incidents; twenty-four hour contacts; one-call participation; post-incident testing; and cast iron pipeline program.**

(A) Telephone notice of incidents and service failures.

- (1) Operators shall ~~provide telephone notice to the chief~~ notify the state of Ohio on all incidents, as defined in rule 4901:1-16-01 of the Administrative Code, by calling 1-844-OHCALL1 (1-844-642-2551) within two hoursthirty minutes of discovery unless notification within that time is impracticable under the circumstances. This includes any telephone notice which is required to be made to the United States department of transportation pursuant to 49 C.F.R. 40, 191, 192, and 199 as effective on the date referenced in paragraph (D) of rule 4901:1-16-02 of the Administrative Code. ~~Telephone notice requires personal contact with the chief or good faith efforts to make personal contact for all incidents. Operators unable to make personal contact with the chief shall leave a message on the commission's incident line, which is 1-614-466-7542.~~
- (2) Operators shall ~~provide telephone notice to the chief~~ notify the state of Ohio on all service failures, which involve an interruption of service to one hundred or more customers for a period of two hours or more, by calling 1-844-OHCALL1 (1-844-642-2551) within two hoursthirty minutes after discovery unless notification within that time is impracticable under the circumstances. ~~Telephone notice requires personal contact with the chief or good faith efforts to make personal contact for all qualifying service failures. Operators unable to make personal contact with the chief shall leave a message on the commission's incident line, which is 1-614-466-7542.~~

(B) Written reports regarding incidents and service failures.

- (1) All written reports required to be made to the United States department of transportation pursuant to the regulations in 49 C.F.R. 40, 191, 192, and 199 as effective on the date referenced in paragraph (D) of rule 4901:1-16-02 of the Administrative Code, shall be submitted concurrently to the chief.
- (2) Within thirty days after the service failure is discovered, each operator shall submit a written report to the chief on the service failure report form provided by the commission.
- (3) For each incident report and each service failure report required by the pipeline safety code, each operator shall also submit a final written report of the cause(s) of the incident or service failure, where ascertainable, and actions taken to minimize the possibility of a recurrence of such an incident or service failure, where appropriate. The final report shall be submitted to the chief within sixty days after discovery of the incident or service failure, unless the operator:
  - (a) For good cause, shows more time is needed.

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- (b) Submits interim reports at intervals of not more than sixty days until a final report is submitted.
- (4) Except for an operator of a master meter system, each operator shall submit an annual written report of incidents and service failures for the preceding calendar year or state that no incidents or service failures occurred during the preceding calendar year on the annual report form provided by the commission. This annual report shall be submitted to the chief not later than March fifteenth of each year.
- (C) Each natural gas company and pipeline company shall register the location of all of its underground utility facilities with a protection service that serves the area where the facilities are located, as provided in division (A) of section 3781.26 of the Revised Code. "Underground utility facilities" and "protection service" shall have the same meaning as in section 3781.25 of the Revised Code.
- (D) Twenty-four hour contact report.
  - (1) Each operator and gas gathering/processing plant pipeline operator shall submit a twenty-four hour contact report to the chief not later than March fifteenth of each year. This written report shall contain:
    - (a) The name(s), business address(es), business telephone and fax number(s), and e-mail addresses of its emergency contact personnel.
    - (b) Any available emergency hotline number.
  - (2) Each operator and gas gathering/processing plant pipeline operator shall, within a reasonable time, notify the chief in writing of any change in emergency contact personnel name(s), business address, business telephone, fax number, emergency hotline number, and/or e-mail address of its emergency contact personnel.
- (E) To the extent necessary to carry out its responsibilities under the pipeline safety code, the commission or its staff may require testing of any intrastate gas pipeline facility which is involved in an incident. After making a good faith effort to negotiate a mutually acceptable plan with the owner of the pipeline facility, the commission or its staff may require the operator or choose an independent laboratory to test such pipeline facility.
- (F) Each operator shall establish a program to identify, repair and replace, as necessary, its cast iron distribution pipeline system which is detrimental to the public safety. This program shall include, but not be limited to, disturbing cast iron pipe, maintenance history, leak history, major street or highway reconstruction or repaving, construction activity, depth of cover, soil type, traffic loading, operating conditions, year of manufacture, type of pipe, amount of graphitization, vibrations, impact forces, earth movement, backfilling after undermining, and water leaks or sewer failures in the area.



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- (G) The forms required by this rule shall be available at the commission's docketing division and electronically on the commission's website at <http://www.puco.ohio.gov>.

## CSI - Ohio

### The Common Sense Initiative

#### Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)  
Attention: Angela Hawkins, Legal Director  
Phone: 614-466-0122 Fax: 614-728-8373  
Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: Gas Pipeline Safety

Rule Number(s): 4901:1-16-02, 4901:1-16-05

Date: August 12, 2016

**Rule Type:**

☐ New

☐ 5-Year Review

☐ No Change

☒ Amended

☐ Rescinded

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.

In light of incidents involving oil and gas pipelines and other events under the jurisdiction of the Ohio Department of Natural Resources, Ohio Department of Commerce, Division of State Fire Marshal, and Ohio Environmental Protection Agency, the state of Ohio has determined that it is appropriate to develop a one-call

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emergency notification system to serve as a single point of contact to receive notice of incidents involving the oil and gas industry. On August 9, 2016, the Governor of Ohio issued Executive Order 2016-04K, which creates and implements the one-call emergency notification system for oil and gas related emergencies.

In order to effectuate the state's one-call emergency notification system, the Commission has determined that Ohio Adm.Code 4901:1-16-05(A) should be amended on an emergency basis pursuant to R.C. 111.15(B)(2). In the 120-day time period during which the emergency rule is in effect, the Commission has initiated a rulemaking proceeding to consider adoption of the amendment to Ohio Adm.Code 4901:1-16-05(A) on a permanent basis.

Along with the proposed permanent amendment of Ohio Adm.Code 4901:1-16-05(A), the Commission has also proposed an update to Ohio Adm.Code 4901:1-16-02(D), such that it incorporates recent changes to the Code of Federal Regulations, by amending the date specified in the rule.

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

Rule	Statutory Authority - Ohio Revised Code
4901:1-16-02	4905.91
4901:1-16-05	4905.91

**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.**

The amendments to Ohio Adm.Code Chapter 4901:1-16 are being proposed consistent with the Commission's regulation of natural gas pipelines and operators, including federal requirements found in the Natural Gas Pipeline Safety Act of 1968, 82 Stat. 720, 49 U.S.C.A. App. 1671 et seq., as well as rules adopted by the United States Department of Transportation pursuant to the Natural Gas Pipeline Safety Act of 1968.

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

The regulations in Ohio Adm.Code Chapter 4901:1-16 include provisions not specifically required by the federal government, but specifically required by the state of Ohio. The amendment of Ohio Adm.Code 4901:1-16-05(A) is being proposed consistent with Executive Order 2016-04K.

- 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 rules contained in Ohio Adm.Code Chapter 4901:1-16 prescribe gas pipeline safety requirements to protect the public safety, as well as procedures for the Commission to administer and enforce the gas pipeline safety code. Further, the amendment of Ohio Adm.Code 4901:1-16-05(A) is being proposed consistent with Executive Order 2016-04K.

- 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 gas pipeline safety proceedings to investigate and determine an operator's compliance with the pipeline safety code, as well as to investigate and determine whether an operator's intrastate gas pipeline facility is hazardous to human life or property. The Commission will measure the success of the regulation in terms of positive results from investigations of pipeline facilities to ensure compliance with the gas pipeline safety code. The Commission can also monitor any complaints that are made to its hotline by consumers, as well as information that is reported by operators.

#### **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 Commission will conduct a workshop on August 25, 2016, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the Commission's review of Ohio Adm.Code 4901:1-16-05(A) and 4901:1-16-02(D) is 16-1712-GA-ORD. The Entry providing notice of the

workshop was served upon all regulated natural gas companies, pipeline companies, certified retail natural gas service suppliers, Ohio Consumers' Counsel, Ohio Gas Association, Ohio Petroleum Council, Ohio Oil and Gas Association, American Petroleum Institute - Ohio, and the Commission's gas-pipeline list-serve.

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

The amendment of Ohio Adm.Code 4901:1-16-05(A) is being proposed consistent with Executive Order 2016-04K. The Commission will consider all comments provided by the stakeholders in attendance at the workshop, as well as all comments that are filed in the docket regarding the amendment of Ohio Adm.Code 4901:1-16-05(A) and Ohio Adm.Code 4901:1-16-02(D).

**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 considered in the amendment of the rule or the measurable outcomes of the rule. In adopting revisions to Ohio Adm.Code 4901:1-16-05(A) and Ohio Adm.Code 4901:1-16-02(D), the Commission will take into account feedback from stakeholders and the general public regarding the effectiveness and efficiency of the currently effective rule and how the rule can be improved. In addition to the workshop, stakeholder and public feedback can be made directly to the Commission by filing comments or through comments from such entities as the Ohio Consumers' Counsel, any gas or natural gas company in the state of Ohio, any competitive retail gas supplier, the Ohio Gas Association, the Ohio Petroleum Council, the Ohio Oil and Gas Association, the American Petroleum Institute - Ohio, or any other entity.

**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?**

No alternatives were considered as the rules in Ohio Adm.Code Chapter 4901:1-16 implement federal and Ohio gas pipeline safety regulations.

- 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.*

The rules in Ohio Adm.Code Chapter 4901:1-16 are performance-based only in the sense that, for example, they require that certain information be reported to the Commission. Primarily, the rules in Ohio Adm.Code Chapter 4901:1-16 are regulatory in nature as required by the Revised Code.

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

The Commission has reviewed other Ohio regulations and did not find any duplication of regulations.

- 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.**

Upon completion of the rule review process, any changes made to Ohio Adm.Code 4901:1-16-05(A) and Ohio Adm.Code 4901:1-16-02(D) will be attached to the Commission's decision in Case No. 16-1712-GA-ORD and served upon all regulated natural gas companies, pipeline companies, certified retail natural gas service suppliers, Ohio Consumers' Counsel, Ohio Gas Association, Ohio Petroleum Council, Ohio Oil and Gas Association, American Petroleum Institute - Ohio, and the Commission's gas-pipeline list-serve. The opportunity for continued feedback and input from the regulated community always exists and better ensures that the implementation of the rules in the chapter will occur smoothly. The Commission's Service Monitoring and Enforcement Division implements measures to ensure consistent and predictable application of the regulations.

#### **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;**

The scope of the business community impacted by the rules under review includes natural gas pipeline operators that are regulated by the Commission.

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

The proposed revisions were drafted in an effort to minimize any adverse impact on business, while maintaining the operational safety of the natural gas infrastructure in the state of Ohio and implementing Executive Order 2016-04K.

Ohio Adm.Code 4901:1-16-05(A) requires that certain information must be reported to the Commission by regulated natural gas pipeline operators.

- 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 4901:1-16-05(A). The rule has been reviewed in an effort to minimize any adverse impact on business, where feasible, while ensuring the public safety. Gas pipeline safety staff works with regulated entities to effectuate and minimize the cost of compliance. The impact in terms of time or expense will, in most instances, be small, if there is any impact at all.

- 15. 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 determined that the proposed amendment to Ohio Adm.Code 4901:1-16-05(A) is essential to implement Executive Order 2016-04K, but also balanced to ensure the operational safety of the natural gas infrastructure and the citizens of the state of Ohio. The Commission will work with stakeholders to develop a rule that best serves these goals.

### **Regulatory Flexibility**

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

No, there is not an exemption or alternative means of compliance for small businesses. The rules address gas pipeline safety to ensure that intrastate gas pipeline facilities are not hazardous or dangerous. Accordingly, an exemption from

compliance would not be appropriate and could pose a hazard or danger to the public.

**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 amendment of Ohio Adm.Code Chapter 4901:1-16 is not focused on seeking penalties for paperwork or first-time offenses. Fines and penalties for violating Ohio Adm.Code Chapter 4901:1-16 may only be ordered by the Commission after notice and hearing. The Commission will fully comply with R.C. 119.14 and will 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 R.C. 119.14.

**18. 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 have been invited to participate in the workshop, in order to provide the Commission Staff with potential revisions to Ohio Adm.Code 4901:1-16-05(A) and Ohio Adm.Code 4901:1-16-02(D) 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.