

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Commerce, Division of State Fire Marshal

Regulation/Package Title: One Call; Hazardous material incident reporting at a shale oil processing premise

Rule Number(s): 1301:7-7-01

Date: September 16, 2016

Rule Type:

New

Amended

5-Year Review

Rescinded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.

The regulation mandates that a responsible person (or, if the responsible person is not available, their representative) shall report to the State of Ohio any ‘fire incident at a shale oil processing premises’ or a ‘hazardous material incident at a shale oil processing premises’ by calling a “One-Call” hotline. The rule sets forth the protocol that must be followed; defines “fire incident at a shale oil processing premises” and “hazardous material incident at a shale oil processing premises;” provides the phone number for the “One Call” hotline to which incidents must be reported; and outlines what information must be relayed.

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

Ohio Revised Code section 3737.832

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.

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

N/A

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)?

As a part of a statewide initiative to provide a single point of contact for oil and gas related emergencies so appropriate first responders and local authorities can be notified of and respond to oil and gas related emergencies in the most expedient manner possible, a “One-Call” hotline has been established. This hotline will provide a single statewide phone number to which incidents can be reported. The dispatch center receiving the calls, operated by the Ohio Department of Natural Resources (ODNR), will then be able to quickly notify or dispatch all appropriate agencies / entities. With regard to shale oil processing premises specifically, the Ohio Department of Commerce, Division of State Fire Marshal (SFM) has sole and exclusive authority to implement safety standards. Therefore, the rule is being proposed by the SFM to define when such entities shall report incidents at a shale oil processing premises to the hotline.

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

The SFM will monitor the use of the One Call system to determine if notification is being made to the hotline and will review statistical data regarding calls received and the responses made thereto. The SFM will also be able to compare data regarding calls to the hotline with data from the Ohio Fire Incident Reporting System (OFIRS) (see #9, below). It is anticipated that there will be enhanced protection of public safety and emergency responders through the use of the hotline. In addition, the hotline will provide a more comprehensive approach to incident resolution and improved notification to and response times from emergency personnel should be measurable.

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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.

Initially, the SFM engaged in months of discussions with ODNR and other sister regulatory agencies. Later, the SFM engaged the American Petroleum Institute (API) and the Ohio Oil and Gas Association (OOGA).

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

The SFM met with the API and the OOGA prior to filing the rule with CSI. The SFM worked extensively with these entities to edit and revise the language of the previously filed emergency rule establishing the One-Call hotline. After review of the revised rule, the SFM received positive feedback from both entities. The SFM will also hold a public hearing to further discuss the rule with stakeholders and all interested parties.

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?

As the rule simply requires the reporting of specified information to a centralized dispatching center, no scientific data was used. However, the SFM did base its notification rule on ODNR's Division of Oil and Gas Resources Management's (DOGRM) rule. That rule was developed after a review of many laws, regulations and standards set at both the national and state levels. Going forward, the SFM intends to review OFIRS, which is a reporting system used by fire departments to report fires and other incidents to which they respond, including responses to hazardous material incidents. The SFM can utilize the data in OFIRS to compare calls being made to the One Call hotline to ensure that the system is being used and that incidents are being reported correctly.

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 SFM did not consider regulatory alternatives because the SFM's statutorily mandated method of implementation of rules regarding the subject facilities is through the enactment of rules. Currently, notification is largely voluntary. Without a regulation requiring notification, the SFM – as has been demonstrated in past occurrences – could be notified days after an incident (if notified at all). The proposed regulation requires SFM notification at the time of an incident and provides an opportunity to be proactive. In addition, the proposed rule does not impose a regulatory structure upon shale oil processing premises. It merely requires such

facilities to immediately report hazardous material incidents so that an appropriate response can be made.

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.

A performance-based regulation would not be applicable to the instant regulation. If responsible persons were merely required to report an incident without any specifications regarding who had to be notified or what information had to be provided, reporting persons could technically satisfy the requirement literally by calling anyone. This, of course, would defeat the purpose of the "One-Call" program, which has been designed to ensure that all appropriate responding agencies and entities will be notified of a hazardous situation and will be provided with all appropriate information necessary to ensure that an appropriate response can be made.

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

As opposed to ODNR, whose authority ends at a well pad, the SFM has exclusive authority to promulgate the Ohio Fire Code (where the instant rule will be located) and regulations regarding safety standards relating to shale oil processing premises (which is downstream from the well pad). The SFM has not promulgated any other provisions regarding reporting procedures to be followed in the event of a hazardous material incident at a shale oil processing premises.

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.

The "One Call" hotline (1-844-OHCALL1) has already been established and will be administered by ODNR at their 24-hours dispatching center. ODNR has already established notification processes to ensure reported incident information is distributed to other Ohio agencies, including the SFM. Upon notification, the SFM will utilize its own internal processes to provide notification of appropriate SFM personnel. With regard to external implementation of the regulation, the SFM will partner with ODNR and will engage in education efforts so that affected parties will not only know of the existing 'hotline,' but will also be informed of their responsibility to report specified incidents. See also response to #18.

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 impacted business community will be all shale oil processing premises owners and operators within the State of Ohio, which includes fractionation plants, of which there are less than half a dozen in the State of Ohio.

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

There is no anticipated adverse impact associated with the implementation of the rule. There will be no associated licensure / licensure fee. The rule will streamline state notification requirements by allowing regulated parties to make one single phone call rather than multiple calls to numerous state agencies. Employer time for compliance should be minimal; this may include the publication of a ‘fact sheet’ type of instrument and/or posting of the “One-Call” hotline number, but such is not mandated in the regulation. There are no fines specifically associated with the regulation; however, the rule will be a part of the Ohio Fire Code (OFC). A violation of the OFC could result in a fine of zero to one thousand dollars; such a fine would only be imposed if a responsible person did not make notification of an incident.

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 expected adverse impact from the regulation. As compliance with the regulation will only require that a responsible person make notification of a hazardous material incident to a centralized phone number, it is anticipated that the costs of compliance will be minimal. Once businesses are aware of the requirements, educate their personnel regarding them, and make the hotline phone number known, there should not be any costs of compliance.

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

N/A

Regulatory Flexibility

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

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No. The proposed OFC regulation will be applicable for all shale oil processing premises on an equal basis to ensure that the reporting of hazardous incidents be done. A hazardous material incident can occur equally at any business – small or large – regardless of its size. The purpose of the One Call system is to provide a single point of contact for the coordination of state agency responses to oil and gas related emergencies so it will be possible for all state first responders and subject-matter experts to be notified of a potential incident and respond in the appropriate manner. Relevant state agencies will be able to better respond to emergencies that could affect public safety and the environment if all companies were required to timely and directly notify a single point of contact who can then coordinate statewide notification and response.

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?

There are no fines or penalties associated with paperwork violations. Nonetheless, the Ohio Revised Code (Rev. Code) provides that a state agency may imposed fines for paperwork violations for first time offenders when “the violation has the potential to cause serious harm to the public interest” or when “the violation presents a direct danger to the public health or safety.” Rev. Code §§ 119.14(C)(1) and (C)(5).

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

SFM Code Enforcement inspectors are available to answer questions and discuss relevant code provisions. They can assist affected parties in determining where it might be beneficial to post the “One-Call” hotline phone number, and how best to have reportable information readily available. They can also provide information regarding what constitutes a ‘hazardous material incident.’ In addition, the SFM will work with ODNR to engage in public outreach regarding the One Call hotline and the regulations regarding notification. The intent is to engage industry partners and stakeholders as well as trade associations to distribute guidance documents and to educate those affected by the regulation.