

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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

Regulation/Package Title: Operation Safe Stay

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

Date: April 23, 2015

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☐ Rescinded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 proposed amendment creates a “Safe Stay Hotel” designation by the State Fire Marshal for those hotels that maintain compliance with licensure requirements, Ohio Fire Code provisions and applicable sanitary standards for a period of 24 months, and that remain free of finding or conviction for nuisance activity, lewdness, assignation, prostitution and /or for

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felony drug activity for a period of 60 consecutive months. This amendment will be housed in Rule 1 of the Ohio Fire Code, which sets forth the licensure standards for hotel and SRO facilities. However, none of the already existing regulations regarding hotel licensure requirements will be altered in any way under the proposed amendment.

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

Rev. Code section 3731.02.

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)?

The purpose of the regulation is to establish a voluntary fire code and sanitary standards compliance incentive program for persons required to procure a license to operate a hotel under section 3731.03 of the Revised Code. The program will incentivize businesses to timely comply with referenced standards and to maintain compliance, thereby making the hotels in the state safer for all occupants and visitors.

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

The State Fire Marshal will keep a registry of all hotels that meet the requirements of the program and will be able to determine from year to year how many facilities are participating in the program, and are therefore providing a consistent level of safety and sanitary conditions for hotel guests.

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.

Ohio Hotel & Lodging Association

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Asian American Hotel Owners Association

Face-to-face meeting was held with stakeholders on Monday, September 8, 2014.

Stakeholders were notified of the meeting via both a “save the date” notification and a later a formal invitation and agenda for the meeting. A copy of the proposed rule was also provided to stakeholders in early March 2015.

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

Stakeholders indicated that they were very interested in an incentive program that included a marketing tool that could be used by them to “advertise” their qualification for/participation in the program. A ‘logo’ or ‘decal’ is being developed that will be provided to program participants for use by them in their advertising and marketing campaigns.

Stakeholders indicated that they wanted the statutory 24 month “qualifying period” to not initiate via a look-back, but rather to be prospective. In order to address stakeholder concern about the qualifying period initiating prior to the conceptualization of the program, the look-back was adjusted to include only the time period after the stakeholders were informed of the program.

Stakeholders indicated that they were not in favor of a provision that required qualifying hotels to display the “Safe Stay Hotel” logo or decal on the premises of the hotel in a conspicuous place. In response, this requirement was deleted from the proposed rule.

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?

Historical data was reviewed to determine the number of hotels that routinely comply with all applicable standards at first inspection versus those hotels that routinely comply after one inspection or after two inspections. That data was then used to project the number of facilities that are likely to comply upon first inspection based on the incentivization resulting from institution of the Safe Stay program.

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?

In addition to a “Safe Stay Hotel” designation for use in advertising and marketing, a licensure fee reduction was also considered. However, current licensure renewal application fees are nominal and a reduction was not feasible. In addition, stakeholders indicated that a fee reduction was not of significant importance to them.

Initially, the use of a color classification scheme was considered whereby hotels would receive a ‘red’ classification if an inspection of the facility resulted in a citation for serious violations of Ohio Fire Code regulations, a ‘yellow’ classification for less serious violations,

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or a ‘green’ classification for no violations. A point system and a “star” rating system were also considered. However, it was determined that using such a system would prove cumbersome and could lead to inconsistency in application of the criteria. Therefore, the program was designed to be clear and easy to understand and to eliminate the possibility for inconsistency in qualification for the program.

Early provisions required that any hotel that was designated as a Safe Stay Hotel had to display the Safe Stay Hotel logo or decal in a conspicuous place within the establishment. Stakeholders indicated that they were not in favor of this requirement and the requirement was deleted.

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.

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

The state fire marshal has exclusive authority to promulgate the Ohio Fire Code and regulations regarding hotel licensure and sanitary standards and the state fire marshal has not promulgated any other provisions regarding an incentive program for hotel facilities that comply with all applicable licensure requirements, codes and standards.

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 program will be implemented in coordination with hotel license renewal applications which must be submitted annually to the State Fire Marshal (hereinafter, “SFM”). Upon the submission of a renewal application, SFM staff will determine whether or not a hotel qualifies for participation in the program and a designation as a “Safe Stay Hotel.” If for the requisite time-periods the hotel has held a valid license to operate a hotel, has timely submitted its renewal application, has not been issued a citation, and there has not been a finding of nuisance or a conviction for lewdness, assignation, prostitution or felony drug activity against the facility, the hotel will be designated as a “Safe Stay Hotel.”

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 any licensed hotel in the state of Ohio that chooses to participate in the program. As of March 13, 2015, there are 1,428 hotels licensed to do business in the State of Ohio.

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

Fees will not be impacted by the program. No fines are associated with the program – hotels can participate in the program or not. There is no additional employer time for compliance in the program – qualification is determined upon submission of the already required application for a renewal license to operate a hotel or subsequent to an inspection of a hotel.

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 not an expected adverse impact from the regulation. In fact, over time, it is anticipated that the regulation will positively impact hotels by decreasing time and staff necessary to participate in required facility inspections because the necessity of multiple inspections in order to gain compliance with Fire Code provisions and sanitary standards will decrease as business owners are incentivized to comply with regulations in a timely manner in order to participate in the program.

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.

No. Fire Code safety provisions and sanitary standards are applicable for all facilities on an equal basis to ensure the safest accommodations possible for all building occupants and guests.

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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.

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

SFM Code Enforcement inspectors are available to discuss relevant code provisions and applicable qualifications for participation in the program. In addition a “compliance manual” is being developed and will be available to industry members and the public via the internet and hard copy. The manual will outline the purpose of the program and requirements for participation in the program. The manual will also provide an overview of applicable Ohio Fire Code fire safety standards and sanitary standards that each facility must meet to comply with applicable law and to participate in the Safe Stay program.