

**MEMORANDUM**

TO: Tracie Boyd, Ohio Department of Commerce, Division of State Fire Marshal

FROM: Tess Eckstein, Regulatory Policy Advocate

DATE: September 28, 2016

RE: **CSI Review – One Call; Fire and Hazardous Material Incident Reporting at a Shale Oil Processing Premise (OAC 1301:7-7-01)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of one amended rule being proposed by the Ohio Department of Commerce, Division of State Fire Marshal (SFM). On August 25, 2016, SFM filed an emergency rule with the Joint Committee on Agency Rule Review (JCARR) to establish requirements for notification to a one-call hotline when fire and hazardous material incidents occur. This rule represents the non-emergency, permanent version of that rule. It was submitted to the CSI Office on September 16, 2016, and the comment period remained open until September 26, 2016.

The rule requires that a responsible person, or that person's representative if the responsible person is not available, report to an established one-call hotline any fire incident or hazardous material incident at a shale oil processing premise. The rule defines "fire incident at a shale oil processing premise" and "hazardous material incident at a shale oil processing premise;" sets forth protocol that must be followed—including reporting within 30 minutes of a responsible person becoming aware of a fire incident at a shale oil processing premise, and within two hours of becoming aware of a hazardous material incident; provides the phone number for the one-call hotline, and outlines what information must be relayed upon notification.

The proposed rule applies to all shale oil processing premises owners and operators working in

Ohio. Potential adverse impacts from the amended rule include making the required notification call, and paying a fine of up to \$1,000 as a result of violating the Ohio Fire Code (OFC). This fine would only be imposed if a responsible person did not make notification of an incident or did not provide necessary information when performing the required reporting. There would be no violation or fee imposed in the event that notification could not be made safely under the circumstances of the incident. Similarly, there would be no violation for failing to report required information if that information was unknown or could not be reasonably estimated. In addition, adverse impacts could include minimal employer time for compliance, including publication of a fact sheet and/or posting of the one-call hotline number, although neither is mandated in the regulation. Finally, although SFM will work with stakeholders to educate industry members via meetings, guidance documents, and email notifications, regulated entities may incur minimal costs associated with educating personnel on the requirements of the rule.

The BIA states that, currently, notification of dangerous incidents to SFM, which has sole and exclusive authority to implement safety standards for shale oil processing premises, is largely voluntary. Without regulation requiring notification, it has been demonstrated in past occurrences that SFM might not be notified until several days after an incident, if it is notified at all. By requiring notification of SFM soon after an incident is realized, the proposed rule provides an opportunity to be proactive. It ensures a more comprehensive approach to incident resolution, which mitigates further risks; leads to improved notification to—and response times from—emergency personnel, which increases efficiency and reduces costs; and enhances protection of public safety and emergency responders. The rule also helps streamline the process for notifying various state agencies through the utilization of a one-call system. The CSI Office requested more detail on the adverse impacts of the rule, and justifications for those impacts, than was included in the original BIA. A revised BIA including this information was submitted on September 26.

SFM engaged the American Petroleum Institute-Ohio (API-Ohio) and the Ohio Oil and Gas Association (OOGA) in discussions regarding the rule. Through these discussions, SFM worked extensively with the entities to revise language used in the previously-filed emergency version of the rule. For example, in response to a concern about natural gas processing facilities, natural gas liquid fractionation facilities, and shale oil processing premises including natural gas compressor stations, SFM specifically excluded compressor stations from the terms.

Other amendments made include formally defining “emergency responder;” separately defining “fire incident at a shale oil processing premise” and “hazardous material incident at a shale oil processing premise,” as well as their triggering events; limiting triggers for reporting of a fire incident; streamlining the definition of hazardous material incident, including removing a reference to life safety systems; adding language to set forth finite periods of time within which notifications must be made, and providing additional time for an on-site contractor to contact a responsible party; affording responsible parties two hours in which to remedy a hazardous material incident before notification is required; and supplementing ORC references with ORC definitions within the text of the rule. After making these revisions, SFM received positive feedback from both entities. All represented parties agreed to explore more controversial topics, such as where compressor stations fall within various regulatory schemes, in a future rule package, rather than in

the present, time-sensitive situation.

One comment was submitted during the CSI public comment period. This comment, submitted by the Ohio Petroleum Marketers and Convenience Store Association, sought to confirm that the focus of the rule was confined to shale oil production facilities, and therefore, the hotline notification process would not apply to fueling facilities. SFM confirmed that fueling facilities would not be implicated by the rule. No further comments were submitted indicating that the rule is overly burdensome. Therefore, the CSI Office has determined the purpose of the rule to be justified.

Recommendations

For the reasons discussed above, the CSI Office does not have any recommendations for this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Department of Commerce, Division of State Fire Marshal should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office