

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: OAC Chapter 3745-20, 5-year review

Rule Number(s): OAC Rules 3745-20-01 to 3745-20-15

Date: December 13, 2016

**Rule Type:**

- |   |   |
|---|---|
| <input type="checkbox"/> New                          | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended/No Change | <input type="checkbox"/> Rescinded                |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 rules in Ohio Administrative Code (OAC) chapter 3745-20 include standards for notification of demolition and renovation activities, standards for asbestos waste handling, standards for both active and inactive waste disposal sites, and other standards for asbestos manufacturing and asbestos containing materials. These rules are patterned after the federal asbestos NESHAPS rules in 40 CFR Part 61, Subpart M.

Changes are being made to the rules in this chapter as the result of a review to fulfill the requirements of Ohio Revised Code (ORC) 106.03 and 106.031. The changes are primarily minor for clarification and to fix typos and update grammar to match agency and LSC formatting standards. Information is also being updated on the version and availability of items referenced in the chapter.

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

<b>Rule Number</b>	<b>Authorizing Statute</b>	<b>Proposed Action</b>
3745-20-01	3704.03(E)	Amended
3745-20-02	3704.03(E)	Amended
3745-20-03	3704.03(E)	Amended
3745-20-04	3704.03(E)	Amended
3745-20-05	3704.03(E)	Amended
3745-20-06	3704.03(E)	Amended
3745-20-07	3704.03(E)	Amended
3745-20-08	3704.03(E)	Amended
3745-20-09	3704.03(E)	Amended
3745-20-10	3704.03(E)	Amended
3745-20-11	3704.03(E)	Amended
3745-20-12	3704.03(E)	Amended
3745-20-13	3704.03(E)	Amended
3745-20-14	3704.03(E)	Amended
3745-20-15	3704.03(E)	Amended

**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.*

These rules are patterned after the federal asbestos NESHAPS rules in 40 CFR Part 61, Subpart M. The rules are necessary for Ohio to maintain primacy over the program.

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

The rules in this chapter do not exceed federal requirements.

- 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 in OAC Chapter 3745-20 serve as part of Ohio's strategies for the control of emissions of asbestos fibers from asbestos abatement and manufacturing activities. The public purpose of this rule is to protect public health and welfare.

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

Ohio EPA maintains a 15% inspection rate of all facility notifications for demolitions and renovations that are regulated. Reports are provided to USEPA annually IAW with the State of Ohio Delegation Authority for Section 112 of the CAA.

### **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 EPA established an initial 30-day early stakeholder outreach period ending November 23, 2015. Ohio EPA Division of Air Pollution Control (DAPC) sent the notices of our request for comments electronically to the 3,000+ members of Ohio EPA's electronic Interested Parties list for DAPC rulemaking. DAPC also posted the notice on our website and placed the notice in the Director's Weekly Review publication.

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

Ohio EPA did not receive any comments on the rule language during the early stakeholder comment period.

**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?**

Asbestos is registered as a known carcinogen in the Agency for Toxic Substances and Disease Registry thus identified as a hazardous air pollutant. The air toxics provisions of the Clean Air Act (CAA) require USEPA to develop and enforce regulations to protect the public from exposure to airborne contaminants that are known to be hazardous to human health. In accordance with Section 112 of the CAA, USEPA establishes National Emission Standards for Hazardous Air Pollutants (NESHAP). Ohio's rules were patterned after the federal asbestos NESHAPS rules in 40 CFR Part 61, Subpart M.

The proposed amendments are not more or less stringent than the federal NESHAP and are clarifying in manner. No additional scientific data was used.

**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 rules in this chapter were originally promulgated in the late 1980's/early 1990's. The changes being made in this rulemaking are for clarity and to fix typos and agency and LSC formatting conventions.

**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 this chapter are well established and have been used by the industry since the mid 1980's. The rules are performance based. For instance, in OAC rule 3745-20-04, asbestos containing materials being removed are required to be wetted to reduce emissions of hazardous asbestos fibers. There are, however, multiple methods accepted in the industry for wetting and removing the materials, any of which may be utilized by a removal contractor to comply with this rule.

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

The Ohio EPA is the only agency having jurisdiction over the control of air pollution, and is specifically directed, under Section 3704.03 of the Revised Code to develop rules for the control of emissions of air pollutants. The rules in this chapter are unique within the Ohio EPA and do not duplicate the rules of this or any other agency.

The Ohio department of health (ODH) also has rules for the asbestos removal industry, however, these rules relate to training of employees and medical record keeping and compliment Ohio EPA's rules without interference.

**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.**

As noted in the response to question #6, Ohio EPA maintains a 15% inspection rate of all facility notifications for demolitions and renovations that are regulated. Reports are provided to USEPA annually IAW with the State of Ohio Delegation Authority for Section 112 of the CAA.

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

A cost of compliance does exist with the rules in this chapter. The initial cost comes in the form of personnel and administrative costs in providing notifications as required in OAC rule 3745-20-03 and complying with the standards. These costs are minimal, on the order of a few hundred dollars per project to complete the notifications and submit them to Ohio EPA.

OAC rule 3745-20-04 also establishes a cost of compliance by requiring owners or operators of demolition or renovation operations to remove regulated asbestos materials from facilities "...being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the materials or preclude access to the materials for subsequent removal."

This rule mirrors a federal requirement and, as such, does not add additional costs beyond those already required because of the federal regulation. Ohio EPA is required to parrot this language in order to have primacy over our program. The actual cost of compliance with this rule is difficult to determine as all asbestos abatement projects are different and each is estimated and bid uniquely. Projects can range from a few hundred dollars to several millions of dollars. It is likely that a certain percentage of each project cost may be due to the cost of complying with this rule, however, as mentioned above, these costs would be required

whether Ohio's rule existed or not because the language in this rule is consistent with federal language and requirements.

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

The control of emissions of asbestos fibers is regulated at the federal level by the asbestos NESHAP regulations in 40 CFR Part 61, Subpart M. Ohio EPA maintains state level rules to maintain primacy over our asbestos program. Ohio's rules are no more or less stringent than the federal requirements.

**Regulatory Flexibility**

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

The rules in this chapter do not provide specific exemptions or alternatives. The rules do set minimum limits under which projects do not need to be reported to Ohio EPA. (3745-20-02(B))

**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 Ohio EPA uses enforcement discretion regarding fines, and penalties for facilities committing a first-time violation are typically waived.

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

The following resources are available:

- Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at <http://www.epa.ohio.gov/ocapp>.

- Ohio EPA also has a permit assistance web page ([http://www.epa.ohio.gov/dir/permit\\_assistance.aspx](http://www.epa.ohio.gov/dir/permit_assistance.aspx)) that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 p.m.
- US. EPA Small Business Gateway also has information on environmental regulations for small businesses available at <http://www.epa.gov/smallbusiness/> and a Small Business Ombudsman Hotline 800-368-5883.
- Ohio EPA's DAPC maintains a SIP Development section through which SIP related rulemaking is performed. DAPC's rules coordinator, Paul Braun, the primary contact for this rulemaking, is available to answer questions. He can be reached by calling 614-644-3734 or by e-mail at [paul.braun@epa.ohio.gov](mailto:paul.braun@epa.ohio.gov).