

Business Impact Analysis

Agency Name: Ohio Environmental Protection Agency

Regulation/Package Title: Asbestos Hazard Abatement Contractors, Specialists
& Other Professionals

Rule Number(s): 3745-22-01 to 3745-22-11

Date: August 15, 2017

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Rescinded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.

The draft rules are a transfer of the current existing rules regulated by the Ohio Department of Health in Ohio Administrative Code (OAC) Chapter 3701-34. With the passage of House Bill 49 and Ohio's Biennium Budget for Fiscal Year 2018-2019 by the 132nd Ohio General Assembly in July 2017, the Asbestos program from the Ohio Department of Health has been transferred to the Ohio Environmental Protection Agency. Therefore, the regulations need to be transferred to Ohio Environmental Protection Agency. These rules govern the licensing of asbestos hazard abatement contractors, specialists, project designers, workers, training course

and other professionals. The asbestos hazard abatement rules ensure the public receives safe and proper asbestos abatement, detection and analytical services by requiring those services be provided by trained and licensed personnel as required by section 3710. of the Ohio Revised Code (“ORC”).

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

ORC 3710.02 & Chapter 119. of the Revised Code

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?

Not applicable to these rules.

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

Not applicable to these rules.

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)?

With the passage of Ohio’s Biennium Budget for Fiscal Year 2018-2019 by the 132nd Ohio General Assembly in July 2017, the Asbestos program from the Ohio Department of Health has been transferred to the Ohio Environmental Protection Agency. This allows the director of environmental protection to adopt the rules governing asbestos hazard abatement contractors, specialists, project designers, workers, training course and other professionals currently existing and regulated by the Ohio Department of Health in Ohio Administrative Code (OAC) Chapter 3701-34.

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

Successful outcomes are measured through onsite review of asbestos hazard abatement projects where standards, including licensing, safety equipment, and monitoring requirements are reviewed. Approximately forty percent of lead projects are reviewed each year. Furthermore, administrative and on-site reviews of training courses are conducted to ensure the content and quality of the training course criteria and testing. On-site reviews are also conducted in the event that a complaint is received about the content or quality of a provider. Further evidence of success would be represented by the number of complaints received and the number of validated complaints.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

Asbestos hazard abatement contractors, specialists, project designers, workers, training course and other professionals.

Building Environment Council of Ohio
Ohio Laborers Training Center
Hina Environmental Solutions
Laborers International Union 310
Environmental Training Center
CTG Environmental Training, LLC
TSI Training
Inservice Training Network
Cuyahoga County Landbank

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

Only one set of comments was received by the Early Stakeholder Outreach. Those comments indicated that they believed the merging of the EPA and ODH programs would streamline operations and provide clarity. The main concern was how fees were charged from the EPA laws. This regulation does not affect the fees because they will remain the same we are just transferring the ODH rules to OEPA.

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?

Numerous studies have been conducted to inform state and federal law in this area. Information regarding these studies can be found online through the below links:

U.S. Centers for Disease Control and Prevention: <http://www.cdc.gov/niosh/topics/asbestos/>

U.S. Environmental Protection Agency: <http://www.epa.gov/superfund/asbestos/policy.htm>

U.S. Housing and Urban Development:

<http://www.hud.gov/offices/pih/publications/notices/99/pih99-31.pdf>

U.S. Occupational Safety and Health Administration: <https://www.osha.gov/SLTC/asbestos/>

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?

As required by ORC section 3710.02, rules 3701-34-01 through 3701-34-11 provide the necessary framework to ensure the licensure of asbestos abatement providers and ensure the

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content and quality of asbestos training program providers in Ohio. These rules reflect current industry standards. Therefore, we are just transferring these rules to Ohio EPA for the merger.

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.

Performance-based regulations were not considered as these rules set forth structural requirements consistent with state and federal law related to occupational licensure and training. Without such structural requirements, we cannot ensure that asbestos hazard abatement is performed properly by qualified licensed personnel in a safe and effective manner.

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

The agency conducted a thorough review of the Ohio Revised Code and Ohio Administrative Code.

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.

Asbestos hazard abatement occupations require licensure and asbestos training course providers are administratively reviewed prior to course commencement and an onsite review is conducted prior to final course approval. Onsite reviews of asbestos hazard abatement projects are conducted for approximately forty percent of projects each year. Reviews will also be conducted as necessary as the result of complaints to determine compliance. Reviews are conducted by specially trained program staff who verifies that the training, licensure, monitoring, and reporting requirements are met.

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;

All asbestos hazard abatement contractors, specialists, evaluation specialists, worker, project designer, air-monitoring technicians, and training course providers.

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

The following number of individuals impacted by (figures as of July 27, 2017):

Asbestos hazard abatement contractor - 212
Asbestos hazard abatement specialist - 1479
Asbestos hazard evaluation specialist - 1022
Asbestos hazard abatement project designer - 167
Asbestos hazard abatement air-monitoring technician - 40
Asbestos hazard abatement worker – 2638

ODH has identified the following number of businesses impacted by Chapter 3701-34 (figures as of July 27, 2017):

Asbestos Training Course Providers – 37

Time for compliance

In general, these recognize and do not duplicate those costs already obligated to the asbestos training providers and asbestos occupational workers by virtue of their participation in the industry. Those costs include, but are not limited to, for training providers, the costs associated with previously obtaining the education and training within their selected field; for workers, the costs associated with such things as training, safety equipment, and respirators. There are also time and manpower costs associated with administrative requirements, including, but not limited to, reporting trainee information to the Director.

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 costs associated with these rules remain unchanged from previous versions of the rules. Individuals regulated by Chapter 3701-34 are subject to costs associated with licensure, training, time for compliance (documentation), submission of samples to a lab. Businesses regulated by Chapter 3701-34 are subject to costs associated with an application, time for compliance (documentation), and submission of reports to the Director.

Fees for Licenses

Asbestos hazard abatement contractor - \$750 / Replacement - \$200
Asbestos hazard abatement specialist - \$200 / Replacement - \$50
Asbestos hazard evaluation specialist - \$200 / Replacement \$50
Asbestos hazard abatement project designer - \$200 / Replacement \$50
Asbestos hazard abatement air-monitoring technician - \$100 / Replacement \$30
Asbestos hazard abatement worker - \$50 / Replacement \$20

Fees for Training Course Approval

Initial course - \$900
Refresher course - \$300

Fee for Contractor Project Notification

Project notification - \$65

Time for compliance

Time necessary to review the rules is approximately 30 minutes.
Time and manpower necessary to complete application materials and compile documentation. Application for asbestos occupational licensure are one page. Compilation of the materials, fees, and application for licensure is approximately one hour of administrative time.

Hazardous Materials Removal Workers
\$17.94 per hour*

Time necessary to create and maintain appropriate record keeping practices is dependent upon the volume of training conducted by the course provider.

Time and manpower necessary for training providers to report to Director the names and identifying information of trainees estimated to be one hour.

First Line Supervisors of Construction Trades and Extraction Workers
\$27.26 per hour*

Time and manpower necessary for training providers to complete application materials, compile documentation and curriculum for submission for training course approval. Application is one page and time necessary to compile supporting documentation is estimated at up to eight hours.

First Line Supervisors of Construction Trades and Extraction Workers
\$27.26 per hour*

Time and manpower necessary for asbestos contractors to complete application materials; compile documentation estimated at up to eight hours.

First Line Supervisors of Construction Trades and Extraction Workers
\$27.26 per hour*

Estimated cost associated with preparation of a project notification estimated at up to eight hours.

First Line Supervisors of Construction Trades and Extraction Workers
\$27.26 per hour*

*Figures from United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May, 2012, using the codes (47-4041) Hazardous Materials Removal Workers and (47-1011) First Line Supervisors of Construction Trades.

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

Ohio EPA is required to implement section 3710.02 the Ohio Revised Code; these rules provide the necessary state-based framework for Ohio EPA to administer and regulate training programs, examinations, and licensing for asbestos hazard abatement occupations in Ohio. These rules ensure that the public receives safe and proper asbestos abatement, detection, and analytical services by requiring those services to be conducted according to state regulations, by trained and licensed personnel.

Regulatory Flexibility

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

Generally, alternative means of compliance are not available for asbestos occupational licensure as licensing is required by statute.

The director may waive the requirements for a license or certificate in an emergency that results from a sudden, unexpected event that is not a planned asbestos hazard abatement project. "Emergency" includes operations necessitated by nonroutine failures of equipment or by actions of fire and emergency medical personnel pursuant to duties within their official

capacities. Any person who performs an asbestos hazard abatement activity under emergency conditions shall notify the director within three days after performance thereof.

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?

Ohio EPA's Asbestos Program as well as the Office of Compliance Assistance and Pollution Prevention provides information and assistance to small businesses.