

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Ohio Department of Health

Regulation/Package Title: Chapter 3701-34 Asbestos Hazard Abatement Contractors, Specialists & Other Professionals

Rule Number(s): 3701-34-01 to 3701-34-11

Date: January 31, 2014: Revised May 13, 2014

**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☐ Rescinded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 regulations in plain language**

The rules set forth in Ohio Administrative Code (“OAC”) Chapter 3701-34 establish the requirements for asbestos related occupations. 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”).

**Pursuant to the five year review revisions have been made to:**

3701-34-01 – The rule establishes definitions for use throughout the chapter including, but not limited to, the rule defines various terms used in Chapter 3701-34, such as “asbestos hazard

abatement activity,” “business entity,” “license,” and “environmental monitoring.” The rule is being amended to comply with Legislative Service Commission rule drafting requirements.

3701-34-03 – The rule sets forth the general application procedures and provisions for contractors, specialists, designers, air monitors, and workers. These requirements include the submission of a completed application, a photograph for identification, and a fee as prescribed by the rule. Furthermore, the rule establishes the time frame in which the Director must acknowledge the receipt of an application, approve or deny an application, and issue the license or certification. The rule is being amended to include dated citations in accordance with Legislative Service Commission rule drafting requirements.

3701-34-04 – The rule sets forth the contractor license application requirements, criteria, and standards of conduct. Application requirements include, but are not limited to, the submission of a completed application and the completion of an appropriate course of instruction in asbestos related activities. The rule is being amended to clarify that the contractor must maintain at the project site a copy of the building inspection report that was prepared by an asbestos hazard evaluation specialist to comply with the United States Environmental Protection Agency requirement for a thorough inspection found in, 40 C.F.R. Part 61, Subpart M. and to include dated citations in accordance with Legislative Service Commission rule drafting requirements.

3701-34-05 - The rule sets forth the application requirements, qualifications, and standards of conduct for asbestos hazard abatement specialists. These requirements and standards include, but are not limited to, the submission of a complete application and associated fee; the completion of a training course in the removal and abatement of asbestos hazards; and ensuring that each project is in compliance with the decontamination procedures, project containment procedures, and asbestos fiber containment methods established by regulations of the United States Environmental Protection Agency. The rule is amended to require abatement specialists to ensure that workers possess proof of valid certification, respirator fit test and physician’s written opinion at all times while at a project site and to include dated citations in accordance with Legislative Service Commission rule drafting requirements.

3701-34-06 – The rule sets forth the application content requirements, qualifications, and standards of conduct for asbestos hazard evaluation specialists. These requirements include, but are not limited to, the collection of bulk samples for asbestos in accordance with federal regulations and the preparation of a detailed report for each bulk sample collection site which includes a description of the manner used to determine sampling locations and a copy of bulk sample analysis reports. The rule is being amended to clarify that evaluation specialist must possess valid certification at all times and to require evaluations specialists to ensure that analysis of bulk samples is performed by laboratories with proficiency demonstrated by current successful participation in a nationally recognized testing program such as the National Voluntary Laboratory Accreditation Program (“NVLAP”) or the National Institute for Standards and Technology (“NIST”) or the Round Robin for bulk samples administered by the American Industrial Hygiene Association (“AIH” A) or an equivalent nationally-recognized round robin testing program and ensure that analysis of samples taken from schools for the purpose of compliance with the regulations of the United States Environmental Protection Agency, 40 C.F.R. Part 763, is performed by laboratories with proficiency demonstrated by current successful participation in the NVLAP.

3701-34-07 – The rule sets forth the application, criteria, and standards for approval of asbestos hazard abatement training courses. These requirements establish the time frames for the Director to acknowledge receipt of an application, to grant or deny contingent approval, and to grant or deny final approval for a training course. The rule is being amended to require each training provider to notify the director, in writing, by the tenth calendar day of each month of the dates that any approved training course was held during previous month, name of the approved training course, students names and their course completion certificate numbers.

3701-34-08 – The rule sets forth application contents, qualifications, and standards of conduct for asbestos hazard abatement workers. These requirements include, but are not limited to, successful completion of a training course in abatement of asbestos hazards; performance of all asbestos abatement activities in compliance with applicable federal and EPA and OSHA standards; and maintenance of proof of valid certification at all times at all project sites. The rule is being amended to clarify that hazard abatement workers must possess valid certification at all times and to include dated citations in accordance with Legislative Service Commission rule drafting requirements.

3701-34-09 – The rule sets forth the required contents of an application, qualifications, and standards of conduct for asbestos hazard abatement project designers. These requirements include, but are not limited to, the successful completion of a training course for asbestos hazard abatement project designers; designing all asbestos abatement projects in compliance with applicable federal and EPA and OSHA standards; and maintenance of proof of valid certification at all times at all project sites. The rule is being amended to include dated citations in accordance with Legislative Service Commission rule drafting requirements.

3701-34-10 – The rule sets forth application contents, qualifications, and standards of conduct for asbestos hazard abatement air-monitoring technicians. These requirements include, but are not limited to, the successful completion of a training course for asbestos hazard abatement air-monitoring technicians; performance of all air-monitoring in compliance with applicable federal, state and local regulations; and maintenance of proof of valid certification at all times at all project sites. The rule is being amended to clarify that air-monitoring specialist must possess valid certification at all times.

3701-34-11 – The rule sets forth the requirement that a written asbestos hazard abatement project agreement be written for all asbestos hazard abatement projects. The written agreement requirements include, but are not limited to, that all persons working on a project be licensed or certified; that each agreement include a detailed description of all project activities; and that all asbestos hazard abatement activities be done in accordance with all applicable federal, state, and local asbestos regulations. The rule is being amended to make grammatical changes and times and to include dated citations in accordance with Legislative Service Commission rule drafting requirements.

**The following rule is being recommended without change:**

3701-34-02 – The rule sets forth the prohibitions pertaining to asbestos hazard abatement projects and asbestos hazard abatement activities, including, but not limited to business and public entities may not perform asbestos hazard abatement projects or activities without a license.

**Please list the Ohio statute authorizing the Agency to adopt these regulations.**  
Ohio Revised Code section 3710.02

- 2. Do the regulations implement a federal requirement? Are the proposed regulations 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.

- 3. 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.

- 4. 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 required by Ohio Revised Code 3710.02, these rules provide the necessary state-based framework for the Ohio Department of Health (“ODH”) to administer and regulate asbestos occupational licensing and training programs in Ohio. The asbestos hazard abatement rules ensure the public receives safe and proper asbestos abatement, detection and analytical services by requiring those services provided by trained and licensed personnel as required by section 3710. of the Ohio Revised Code.

- 5. How will the Agency measure the success of these regulations 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**

- 6. Please list the stakeholders included by the Agency in the development or initial review of the draft regulations.**

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

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

ODH program staff solicited comments on the current OAC Chapter 3701-34 rules during presentations to stakeholders beginning in the summer, 2013, and followed-up with stakeholders when a stakeholder's meeting was scheduled for January 22, 2014. TSI Training Network was the only stakeholder to participate in the meeting.

**8. 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/>

**9. 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 for ODH to ensure the licensure of asbestos abatement providers and ensure the content and quality of asbestos training program providers in Ohio. These rules reflect current industry standards.

**10. Did the Agency specifically consider performance-based regulations? Please explain.**

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, ODH cannot ensure that asbestos hazard abatement is performed properly by qualified licensed personnel in a safe and effective manner.

**11. What measures did the Agency take to ensure that these regulations do not duplicate an existing Ohio regulation?**

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

**12. Please describe the Agency’s plan for implementation of these regulations, including any measures to ensure that the regulations are 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 a staff who verifies that the training, licensure, monitoring, and reporting requirements are met.

**Adverse Impact to Business**

**13. Provide a summary of the estimated cost of compliance with these rules. 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**

ODH has identified the following number of individuals impacted by Chapter 3701-34 (figures as of January 28, 2014):

Asbestos hazard abatement contractor - 1177  
Asbestos hazard abatement specialist - 12079  
Asbestos hazard evaluation specialist - 5955  
Asbestos hazard abatement project designer - 888  
Asbestos hazard abatement air-monitoring technician - 747  
Asbestos hazard abatement worker – 28494

ODH has identified the following number of businesses impacted by Chapter 3701-34 (figures as of January 28, 2014):

Asbestos Training Course Providers – 420

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 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.

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

ODH is required to implement section 3710.02 the Ohio Revised Code; these rules provide the necessary state-based framework for ODH 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**

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

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

**16. 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?**

ODH's Regulatory Ombudsman has set forth a policy for ODH to follow regarding the waiver of fines and penalties for paperwork violations and first-time offenders. ODH implements this policy as part of its business process. Information regarding this policy can be found online at: <http://www.odh.ohio.gov/rules/ombudsman/regulatoryombudsman.aspx>.

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

The Ohio Department of Health, Asbestos Program provides information and assistance to lead course providers and environmental lead analytical laboratory applicants. Additional information is available at:

<http://www.odh.ohio.gov/odhprograms/dspc/asbes1/asbestos1.aspx>