



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency

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Regulation/Package Title (a general description of the rules' substantive content):

Chapters 3745-20 and 3745-22, Ohio's Asbestos emissions control and training and licensure

Rule Number(s): Amendments: OAC 3745-20-(01 to 13 and 15) and 3745-22-(01 to 11)
No-change 3745-20-14

Date of Submission for CSI Review: October 2, 2023

Public Comment Period End Date: November 3, 2023

Rule Type/Number of Rules:

New/___ rules

No Change/1 rules (FYR? Y)

Amended/25 rules (FYR? Y)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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CSIPublicComments@governor.ohio.gov

Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

Chapter 3745-20 of the Ohio Administrative Code (OAC) contains the requirements for the control of emissions of asbestos fibers from asbestos abatement and manufacturing activities. The rules 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.

The rules in Ohio Administrative Code (OAC) 3745-22 establish Ohio's licensing, certification and approval requirements for business entities and individuals that are performing activities related to asbestos including contractors, training providers, supervisors, workers, inspectors and management planners, air monitoring technicians, and project designers.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

For OAC Ch. 3745-20: Statutory Authority: 3704.03(E), Rule Amplifies: 3704.03(A), 3704.03(E).

For OAC Ch. 3745-22: Statutory Authority: 3710.02, Rule Amplifies: Each rule varies, all rules in this chapter amplify a portion of ORC 3710.

4. **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?**

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If yes, please briefly explain the source and substance of the federal requirement.

The rules in OAC Ch. 3745-20 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.

The rules in OAC Ch. 3745-22 do not implement federal requirements but are needed for a federal program approval. The Ohio EPA must apply to U.S. EPA for approval of our asbestos licensing program and demonstrate how our program meets the requirements found in the “Asbestos Model Accreditation Plan” 40 CFR part 763, Appendix C to Subpart E.

As a result of having a U.S. EPA approved program, Ohio EPA will be able to:

- a) Conduct training for accreditation purposes under section 206 of TSCA.
- b) Approve training course providers to conduct training or issue accreditation that satisfies the requirements of TSCA unless the course is approved by another state that has USEPA MAP approval.
- c) Issue accreditation that satisfies the requirement for TSCA accreditation.

5. If the regulation implements a federal requirement, but includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

These rules do not exceed any federal requirements.

6. 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, the rules in OAC Ch. 3745-22 provide the necessary state-based framework for the Ohio EPA 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.

The rules in OAC Ch. 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.

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

For OAC Ch. 3745-20, Ohio EPA maintains a 15% inspection rate of all facility notifications for demolitions and renovations that are regulated. Reports are provided to USEPA annually with the State of Ohio Delegation Authority for Section 112 of the CAA.

For OAC Ch. 3745-22, 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 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 when 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.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

These rules are not being submitted pursuant to any of the above statutes.

Development of the Regulation

- 9. 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 sent out a request for early stakeholder input on June 3, 2022 ending July 6, 2022. The request was sent electronically to Ohio EPA's interested parties email list, and posted on Ohio EPA's Divisions of Air Pollution Control regulations website. Copies of the request were also sent to interested parties in the asbestos industry including training providers. Comments were received from Douglas D. Schafer, Training Manager, and Robert Walter, Instructor, both with Training Services International, Inc. (TSI).

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

Ohio EPA reviewed the submitted comments and had the following responses:

OAC 3745-22-01 Definitions

Comment 1: 3745-22-01(C) – This definition includes the term “operation and maintenance” which is not defined in the regulation and can mean several activities traditionally performed by personnel who have successfully completed the Asbestos Operations and Maintenance Course in the AHERA regulation. These include activities such as moving an intact asbestos ceiling tile to perform maintenance above the drop ceiling or cleaning up debris on a floor that would otherwise be considered OSHA Class IV. Including the term operation and maintenance in the asbestos hazard abatement activity definition technically requires that these activities involving more than 3 SF/ LF of friable ACM would need to be performed by an AHAW or AHAS. We believe that this is unnecessary and over-reaching and recommend removing the use of the operations and maintenance term from the definition.
(Douglas D. Schafer, Training Manager, and Robert Walter, Instructor, both with Training Services International, Inc. (TSI))

Response 1: Ohio EPA acknowledges your comment but will not remove or define the term operation and maintenance. This term was added to meet the AHERA requirements in order for Ohio to become a US EPA approved state.

OAC 3745-22-07 Asbestos Training Courses

Comment 2: With a wide range of asbestos training courses being offered across the country, requiring the most recent training certificate be from an OEPA-approved trainer would help ensure that at least the last training session taken by an applicant meets OEPA's training requirements and addresses OEPA asbestos regulations and requirements. This can be done by adding a requirement in paragraph A stating something like the last training certificate is required to be from an OEPA-approved asbestos training provider. **(Douglas D. Schafer, Training Manager, TSI)**

Response 2: Ohio EPA acknowledges your comment but will not add this requirement. Ohio EPA accepts only asbestos refresher training that meets the US EPA requirements.

Comment 3: 3745-22-07 – Since the last revision of these rules, online asbestos refresher courses have been allowed. This has been popular with many of our students even after gathering restrictions have been lifted. It is good to allow these refreshers to be offered, but more is needed to regulate the quality of these courses. We recommend OEPA require online refreshers meet the requirements of the USEPA's Guidelines for States Regarding Online Asbestos Model Accreditation Plan (MAP) Annual Refresher Training Memorandum, dated July 9, 2007. Since this memorandum was issued 15 years ago, we recommend the following additional requirements for online refreshers, as listed in the following comments: **(Douglas D. Schafer, Training Manager, and Robert Walter, Instructor, TSI)**

Response 3: Ohio EPA acknowledges your comment. Ohio EPA already requires online refresher courses to follow the requirements of this guidance document per OAC 3745-22-07(D) which requires approved training providers to also follow the United States environmental protection agency "Model Accreditation Plan," 40 CFR 763, Subpart E, Appendix C.

Comment 4: Training shall be done virtually using an online meeting format that provides video putting both instructors and students on a live video feed that is continuously monitored for the duration of the course. **(Douglas D. Schafer, Training Manager, and Robert Walter, Instructor, TSI)**

Response 4: Ohio EPA acknowledges your comment. Ohio EPA already requires online refresher courses to have a live video feed that is continuously monitored and where students and instructors can freely communicate. Ohio EPA also requires a proctored exam per OAC 3745-22-07(B)(2)(d)(v). Ohio EPA requires training providers to follow the requirements of the US EPA's Guidelines for States Regarding Online Asbestos Model Accreditation Plan (MAP) Annual Refresher Training Memorandum, dated July 9, 2007, per OAC 3745-22-07(D), which requires approved training providers to also follow the United States environmental protection agency "Model Accreditation Plan," 40 CFR 763, Subpart E, Appendix C.

Comment 5: Video and audio communication shall be available between all students and instructors throughout the course. **(Douglas D. Schafer, Training Manager, and Robert Walter, Instructor, TSI)**

Response 5: Ohio EPA acknowledges your comment. Ohio EPA already requires online refresher courses to have a live video feed that is continuously monitored. Ohio EPA requires training providers to follow the requirements of the US EPA's Guidelines for States Regarding Online Asbestos Model Accreditation Plan (MAP) Annual Refresher Training Memorandum, dated July 9, 2007, per OAC 3745-22-07(D), which requires approved training providers to also follow the United States environmental protection agency "Model Accreditation Plan," 40 CFR 763, Subpart E, Appendix C.

Comment 6: Testing shall be conducted with a secure testing program and live video proctoring. **(Douglas D. Schafer, Training Manager, TSI)**

Response 6: Ohio EPA acknowledges your comment. Ohio EPA already requires online refresher courses to have a live video feed that is continuously monitored and where students and instructors can freely communicate. Ohio EPA requires a proctored exam per OAC 3745-22-07(B)(2)(d)(v). Ohio EPA requires training providers to follow the requirements of the US EPA's Guidelines for States Regarding Online Asbestos Model Accreditation Plan (MAP) Annual Refresher Training Memorandum, dated July 9, 2007, per OAC 3745-22-07(D), which requires approved training providers to also follow the United States environmental protection agency "Model Accreditation Plan," 40 CFR 763, Subpart E, Appendix C.

Comment 7: It is important that these asbestos refresher courses are conducted as virtual webinars with live video and audio interaction rather than online training courses where the students independently take the course with no direct supervision. These online independent courses are available and do not meet the requirements set by OEPA for virtual asbestos refresher training. **(Douglas D. Schafer, Training Manager, TSI)**

Response 7: Ohio EPA does not allow, nor do we accept online refresher courses that are not live or virtual. Ohio EPA already requires online refresher courses to have a live video feed that is continuously monitored. Ohio EPA requires training providers to follow the requirements of the US EPA's Guidelines for States Regarding Online Asbestos Model Accreditation Plan (MAP) Annual Refresher Training Memorandum, dated July 9, 2007, per OAC 3745-22-07(D), which requires approved training providers to also follow the United States environmental protection agency "Model Accreditation Plan," 40 CFR 763, Subpart E, Appendix C.

Comment 8: Training certificate should state that the training was taken Virtually. **(Robert Walter, Instructor, TSI)**

Response 8: Ohio EPA already requires training courses to show the location in which they were taken. When taken virtually the certification would indicate the course was taken "Online". This can be found as part of the recordkeeping requirement found in OAC 3745-22-07(B)(2)(4)(b) and also recommended in the requirements of the US EPA's Guidelines for States Regarding Online Asbestos Model Accreditation Plan (MAP)

Annual Refresher Training Memorandum, dated July 9, 2007, per OAC 3745-22-07(D), which requires approved training providers to also follow the United States environmental protection agency "Model Accreditation Plan," 40 CFR 763, Subpart E, Appendix C.

Comment 9: The previous training record of the student should be verified prior to the student taking the virtual course (no different from the current in-person requirements).
(Robert Walter, Instructor, TSI)

Response 9: Ohio EPA already requires this under OAC 3745-22-07(B)(3).

Comment 10: The training course must include a test similar in nature to the exams provided during in-person instruction. **(Robert Walter, Instructor, TSI)**

Response 10: Ohio EPA already requires this under OAC 3745-22-07(B)(2).

11. 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?

For the rules in OAC Ch. 3745-22, 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: <https://www.epa.gov/superfund/asbestos-superfund-sites-national-policy-directives>
- U.S. Housing and Urban Development: https://www.hud.gov/sites/documents/DOC_11220.pdf
- U.S. Occupational Safety and Health Administration: <https://www.osha.gov/SLTC/asbestos/>

For the rules in OAC Ch. 3745-20, 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 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?
Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

For the rules in OAC Ch. 3745-20, these rules 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.

For the rules in OAC Ch. 3745-22, as required by ORC section 3710.02, the rules in OAC Chapter 3745-22 provide the necessary framework 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.

13. 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. Ohio EPA is the only state agency regulating these areas and these rules do not duplicate other existing regulations.

14. 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.

For the rules in OAC CH. 3745-22, asbestos hazard abatement occupations require licensure and asbestos training course providers. These 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 are also conducted as necessary as the result of complaints to determine compliance. Reviews are conducted by specially trained program staff who verify that the training, licensure, monitoring, and reporting requirements are met.

For the rules in OAC Ch. 3745-20, Ohio EPA maintains a 15% inspection rate of all facility notifications for demolitions and renovations that are regulated. Reports are provided to USEPA annually with the State of Ohio Delegation Authority for Section 112 of the CAA.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

- a. Identify the scope of the impacted business community, and**
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

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.

For the rules in OAC Ch. 3745-20, 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.

For the rules in OAC Ch. 3745-22, the costs associated with these rules remain unchanged from previous versions of the rules. Individuals regulated by OAC Chapter 3745-22 may be subject to costs associated with licensure, training, time for compliance (documentation), and submission of samples to a laboratory for analysis. Businesses regulated by OAC Chapter 3745-22 are subject to costs associated with completing their application to provide a training program, 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 is one page. Compilation of the materials, fees, and application for licensure is approximately one hour of administrative time.

Hazardous Materials Removal Workers
\$23.26 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
\$32.25 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
\$32.25 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
\$32.25 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
\$32.25 per hour*

*Figures from United States Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages for the State of Ohio, May 2018, using the codes (47-4041) Hazardous Materials Removal Workers and (47-1011) First Line Supervisors of Construction Trades.

The changes being proposed in this rulemaking do not affect (raise or lower) the costs of compliance noted above.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

Changes for this rulemaking were minor to fix typos, for clarification, and to remove unnecessary rule restriction language.

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

For the rules in OAC Ch. 3745-22, Ohio EPA is required to implement section 3710.02 of 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.

For the rules in OAC Ch. 3745-20, 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

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

For the rules in OAC Ch. 3745-20, the rules 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))

For the rules in OAC Ch. 3745-22, 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, "As early as possible but not later than, the following working day if the operation is an emergency demolition..." (3745-20-03(A)(3)(c)).

19. 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.

20. 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 <https://epa.ohio.gov/divisions-and-offices/environmental-financial-assistance/about-defa/office-of-compliance-assistance-and-pollution-prevention>.

- 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'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.