

**MEMORANDUM**

TO: Kaye Norton, Ohio Department of Health

FROM: Sydney King, Regulatory Policy Advocate

DATE: March 27, 2014

RE: **CSI Review – Lead Hazard Abatement Activities (OAC 3701-32-01, 3701-32-02, 3701-32-03, 3701-32-04, 3701-32-05, 3701-32-06, 3701-32-07, 3701-32-08, 3701-32-09, 3701-32-10, 3701-32-11, 3701-32-12, 3701-32-13, 3701-32-14, 3701-32-15, 3701-32-16, 3701-32-16.1, 3701-32-16.2, 3701-32-16.3, 3701-32-17, 3701-32-18 and 3701-32-19)**

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 fourteen amended rules and eight no change rules being proposed by the Ohio Department of Health (ODH) related to lead hazard abatement activities. These rules are reviewed as part of the five-year review process required by ORC 119.032. The rule package was filed with the CSI Office on December 30, 2013, and the original comment period for the rules closed on January 29, 2014. However, ODH made clarifications and grammatical amendments subsequent to the filing and extended the public comment period to February 6, 2014. ODH provided a revised BIA on January 28, 2014.

Lead abatement is the process of safely removing and reducing lead hazards from buildings. The rule package provides requirements for licensure and allowed activities for lead risk assessors, lead abatement workers, lead abatement project designers, and lead inspectors. The rules contain requirements for report writing, record maintenance, application fees, and examinations. Training

requirements and qualifications for essential maintenance and lead-safe renovation program training managers and instructors are also provided. According to the BIA, the rule package ensures that the public receives safe and proper lead abatement services by requiring the services be conducted by trained and licensed professionals who adhere to federal and state regulations.

The BIA indicates that stakeholders were involved in the early review and drafting of the rules. The stakeholders included the Building Environment Council of ODH, East Akron Neighborhood Development Corporation, Hina Environmental Solutions, and Cleveland Public Health Department. ODH staff presented the rules and solicited feedback in the summer and fall of 2013. ODH amended the draft rules in response to comments received. No comments were received during the public comment period.

ODH states 1,304 licensed lead-related professionals will be impacted by these rules. These rules will also impact individuals working to become newly licensed in lead abatement activities in the State of Ohio. Clearance technicians, lead inspectors, lead risk assessors, lead abatement contractors, lead abatement workers, and lead abatement project designers are subject to the adverse impacts associated with the costs of licensure, training, submission of samples to labs, fines, and compliance. The requirements for licensure, reports, allowed lead abatement activities, and record retention differ by professional licensure. The licensing fees are \$250 for clearance technicians, \$250 for lead inspectors, \$250 for lead risk assessors, \$500 for lead abatement contractors, \$50 for lead abatement workers, and \$500 for lead abatement project designers. Additionally, each discipline must take and pass a licensure examination at a cost of \$70 and prepare and submit reports to labs and ODH.

Training programs, clinical laboratories, environmental lead analytical laboratories, and manufacturers of encapsulants are also impacted by the rules. The rules provide training program requirements, report requirements, compliance requirements, and documentation requirements for these industries. Manufacturers of encapsulants are required by Ohio Revised Code 3742.03 to demonstrate a design life of twenty years and the safety and durability of their products to ODH. The BIA states there are twelve approved manufacturers in Ohio.

During the review, the CSI Office requested additional information about the monthly summary and report writing requirements. ODH provided information on the contents of the report, if report templates are available, and how the reports and monthly summaries are submitted. ODH also provided the estimated time to complete the reports with wage costs in the BIA.

The CSI office inquired to ODH about possible duplication with Ohio Environmental Protection Agency (Ohio EPA) rules relating to lead abatement activities. Although the United States Environmental Protection Agency issues grants to state lead hazard reduction programs and provides the standards for proper lead abatement training and activities, Ohio Revised Code

3742.03 authorizes ODH to adopt rules for the administration and enforcement of lead abatement. The Ohio EPA regulates the amount of lead in drinking water and lead hazard contamination. ODH has provided assurances that the rules do not duplicate Ohio EPA efforts.

ODH states the rules are necessary to implement Ohio Revised Code 3742.08 and ensure the public receives safe and proper lead abatement services.

After reviewing the proposed rules and the revised BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rules is justified.

Recommendation

For the reasons explained above this office does not have any recommendations regarding this rule package.

Conclusion

Based on the above comments, the CSI Office concludes that the Department 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