



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Commerce, Division of Industrial Compliance, Bedding Section

Rule Contact Name and Contact Information:

Aaron Johnston, Division Counsel, 614-644-3297

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

Bedding Laboratory Fees

Rule Number(s): 1301:3-3-01 Bedding laboratory fees.

Date of Submission for CSI Review: 3/24/21

Public Comment Period End Date: 4/07/21

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 1 rules (FYR? ___)

Rescinded/___ rules (FYR?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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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):

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- 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.

The rule establishes the amount of fees to be collected when the Division's bedding laboratory performs tests and analyses of articles of bedding or stuffed toys.

- 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.**

R.C. 3713.04

- 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?**

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

No.

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

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N/A

- 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)?**

Regulation is necessary in this area pursuant to the statutory mandate to set fees for tests and analysis performed by the bedding laboratory within the Ohio Department of Commerce. This requirement is found in section 3713.04 of the Revised Code, which provides, in part, “If the superintendent exercises this authority [of establishing and maintain facilities within the department of commerce to makes tests and analyses of materials used in the manufacture of bedding and stuffed toys], the superintendent shall adopt rules to determine the fees and charges to be paid for making the tests or analyses authorized under this section.” R.C. 3713.04(C)(2).

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

The Department will measure the success of this regulation by periodically evaluating the costs associated with administering the Division’s bedding laboratory and comparing those costs with the fees set forth in this rule to ensure that the fees continue to accurately represent the amount necessary to cover such costs.

- 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.

No.

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.

See attached list.

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

No comments were received.

- 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?**

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The type of tests and analyses offered by the bedding laboratory were selected based upon the many years of experience and specialized training received by individuals working in the bedding laboratory as it pertains to material identification and verification procedures.

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 in the broadest sense were not an option because section 3713.04 of the Revised Code provides a statutory mandate to the Superintendent of the Division of Industrial Compliance to establish the amount of fees to be charged when the Division establishes a bedding laboratory to perform tests and analyses of articles of bedding and stuffed toys. The specific amount of fees was considered as potential alternatives, but the amounts set forth in this rule accurately represent the costs associated with administering the stated tests and analyses offered by the bedding laboratory.

13. 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.*

A performance-based regulation is not appropriate given the nature of the regulation at issue. Section 3713.04 mandates that the superintendent establish the amount of fees to be charged for tests and analyses performed by the bedding laboratory. The amount of fees set in this rule represent the amount necessary to cover the costs borne by the Division to administer the bedding laboratory and the bedding section's operations, and these costs are not related to performance-based outcomes as envisioned by a performance-based regulation.

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

The Division reviewed the Superintendent's rule-making authority and established that the Superintended is only person granted rule-making authority over bedding regulation under section 3713.04 of the Revised Code.

15. 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.

To begin, only grammatical or stylistic changes are proposed in this rule package. As such, the regulated community should already be aware of the rule's substantive provisions. Secondly, the Division's personnel will be available to answer any questions or address concerns raised by members of the regulated community regarding implementation of the regulation.

Adverse Impact to Business

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16. 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; and

The scope of the impacted business community includes importers, manufacturers, renovators, wholesalers, and reupholsterers of stuffed toys or articles of bedding.

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

Fees.

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.

Percentage calculation: \$55.00; Fibers and other natural and man made material percentages: \$55.00; Macroscopic evaluation: \$55.00; Microscopic analysis: \$55.00; Man-made fiber identification: \$60.00; Fiber Composition identification: \$90.00 for each fiber type; Chemical and microscopial analysis: \$110.00; Feather and fiber separation: \$110.00; Down and fiber separation \$110.00; Quantitative analysis of content without species identification: \$150.00; Content and species qualitative and quantitative analysis: \$200.00;

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

The Agency determined that the regulatory intent justifies the adverse impact to the regulated business community because the amount of fees charged for administering tests and analyses of bedding materials correlates the with costs borne by the Division in maintaining the bedding laboratory, the direct costs associated with performing the tests and analyses, as well as the Division’s costs in enforcing Chapter 3713. of the Revised Code.

Regulatory Flexibility

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

No, the regulation does not provide any exemptions or alternative means of compliance for small businesses, because the costs associated with the tests and analyses performed by the bedding laboratory are not affected by the size of the business submitting the materials for testing.

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?

Typically, the Ohio Department of Commerce notifies those subject to Chapter 3713's requirements of any paperwork mistakes or violations (regardless of whether it is the individual's first paperwork error) and assists the individual in making any necessary corrections. All reasonable efforts are made to provide an opportunity to remedy non-compliance without issuance of fines or other penalties attaching.

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

The Division's staff is available to answer any questions and address concerns raised by members of the small business community as it pertains to implementation of these regulations.



Department of Commerce

Division of Industrial Compliance

John R. Kasich, Governor
David Goodman, Director

Bedding Stakeholders

International Association of Bedding and
Furniture Law Officials (IABFLO)

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