



## 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 and Upholstered Furniture Inspection

Rule Number(s): 4101:6-1-02 through 4101:6-1-19; 4101:6-1-21 through 4101:6-1-25

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/ 22 rules (FYR? Y)

Rescinded/ 1 rules (FYR? Y)

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

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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.

### **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.*

The rules establish guidance for labeling of articles of bedding and stuffed toys subject to the requirements of Chapter 3713. of the Revised Code, including defining how filling materials used in such articles must be described on the required labels of such articles. In addition, Chapter 4101:6-1 of the Ohio Administrative Code describes how secondhand articles of bedding must be sterilized or sanitized in order to be offered for sale. For list of rules and description of proposed amendments, see attached spreadsheet.

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

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- 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.**

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)?**

To begin, sections 3713.02 and 3713.08 of the Revised Code require articles of bedding and stuffed toys to have a label containing information about the materials used in the articles, as well as other information required by the Superintendent. These regulations are necessary to ensure bedding and stuffed toy labels include accurate information and that purchasers of such articles are adequately informed of the articles' contents. The rules also help to ensure uniformity in the labeling process and help to promote clarity for the end-user. In addition, pursuant to sections 3713.02 and 3713.08 of the Revised Code, secondhand articles of bedding and stuffed toys may only be sold or offered for sale if they have been sanitized in accordance with rules promulgated by the Superintendent. Accordingly, these rules establish criteria for how such articles must be sanitized or sterilized to ensure they may be used in a safe manner thereafter.

- 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 gathering feedback from the public, stakeholders, and any interested parties regarding the clarity and impact of the rules. The regulations will be successful when they provide clear guidance to stakeholders about how to meet the statutory requirements of Chapter 3713. of the Revised Code, as determined by the feedback from interested parties and the incidence of non-compliance found, in part, to be caused by misunderstanding of the regulations.

- 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**

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**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?**

The rules were developed as a result of industry and other state regulators' interaction, including the ASTM (formerly known as the American Society for Testing and Materials) and the International Association of Bedding and Furniture Law Officials (IABFLO). The bedding and stuffed toys industry agrees with the need for standardization. This is an outcome of years of development among regulators and manufacturers.

**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 that were considered included categorizing the types of materials and fillers used in bedding and stuffed toys into different groups than those proposed in these rules. However, the divisions selected best represent the point of providing accurate and clear guidance to end-users while not over-complicating the labeling of bedding and stuffed toys sold and offered for sale within the state. As for secondhand bedding sterilization and sanitization, the types of procedures that have been approved represent the best means by which to ensure such materials are properly cleansed to ensure secondhand materials may be obtained and used safely in the state.

**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. Ultimately, the bedding regulations, specifically those dealing with labeling of articles of bedding and stuffed toys, are intended to promote accuracy in the labeling process and ensure end-users are properly informed about the contents of the articles they are considering to purchase. As such, a performance-based regulation was not a feasible alternative.

**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 Superintendent is granted exclusive rule-making authority over bedding regulations under section 3713.04 of the Revised Code. The Division also reviewed relevant provisions of the Ohio Administrative Code to confirm no duplication of existing Ohio regulations.

**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.**

In addition to submitting the rules for comment to stakeholders and interested parties, 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 regulations.

**Adverse Impact to Business**

**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, as well as retailers and secondhand dealers of articles of bedding and stuffed toys.

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

Fees collected from bedding registrants as required by section 3713.02 of the Revised Code and time committed to compliance matters, such as ensuring articles of bedding and stuffed toys are properly tested and labeled as required by section 3713.08 of the Revised Code. These rules, for example, provide guidance on how such articles are to be labeled.

**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.*

For manufacturers and wholesalers, the adverse impact consists of a 4 cents per item fee, personnel time to complete an application, a small (\$35 to \$50) annual registration fee, and the cost of printing and attaching labels to bedding and stuffed toys. For secondhand dealers, the adverse impact consists of the personnel time to complete an application, the cost of printing, attaching labels, and sterilizing bedding and stuffed toys. Since these

requirements already exist under current regulations—and are required by Chapter 3713. of the Revised Code—no new adverse impact will result from the proposed rule package.

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

Section 3713. of the Revised Code requires rules to be made governing bedding and stuffed toy registration and safety. The Agency is, therefore, required to adhere to these standards, which, by necessity, impose a certain level of adverse impact to the regulated business community. These standards, however, were adopted with great consideration given to ensure these standards conform as much as possible to standards applicable throughout the bedding and stuffed toy industry, thereby easing the adverse impact to the regulated business community. Additionally, no comments or objection from the regulated business community were received.

**Regulatory Flexibility**

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

Yes, there are several such exemptions; 1) Manufacturers that produce 100 or fewer stuffed toys annually; 2) manufacturers that produce five or fewer quilts annually; 3) manufacturers that produce 20 or fewer pillows annually; and 4) organizations described in section 501(c)(3) of the Internal Revenue Code and that are exempt from income tax under section 501(a).

**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 the requirements of Chapter 3713. of the Revised Code 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. Additionally, the section offers "Industry Round-table discussion" in effort to

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assist small businesses into achieving and maintaining compliance with the requirements of Chapter 3713. of the Revised Code.

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<b>Rule</b>	<b>Type</b>	<b>Description of changes made</b>
4101:6-1-02	Amended	Stylistic changes and regulatory restrictions removed
4101:6-1-03	Amended	Removed reference to "license" and changed to "registration" to conform to statutory language, and stylistic/grammatical changes.
4101:6-1-04	Amended	Removed reference to "license" and changed to "registration" to conform to statutory language, modes of communication modernization, and stylistic/grammatical changes.
4101:6-1-05	Amended	Removed reference to "license" and changed to "registration" to conform to statutory language, and stylistic/grammatical changes.
4101:6-1-06	Amended	Stylistic and grammatical changes.
4101:6-1-07	Amended	Stylistic and grammatical changes.
4101:6-1-08	Amended	Added reference to sanitization to accompany sterilization, which was already referenced in the rule.
4101:6-1-09	Amended	Stylistic and grammatical changes.
4101:6-1-10	Amended	Stylistic and grammatical changes.
4101:6-1-11	Amended	Stylistic and grammatical changes.
4101:6-1-12	Amended	Stylistic and grammatical changes.
4101:6-1-13	Amended	Stylistic and grammatical changes.
4101:6-1-14	Amended	Stylistic and grammatical changes.
4101:6-1-15	Amended	Stylistic and grammatical changes.
4101:6-1-16	Amended	Stylistic and grammatical changes.
4101:6-1-17	Amended	Stylistic and grammatical changes.
4101:6-1-18	Rescind	
4101:6-1-19	Amended	Stylistic and grammatical changes.
4101:6-1-21	Amended	Added sanitization to accompany sterilization to conform with statutory language; added modernized mode of communication; stylistic/grammatical changes.
4101:6-1-22	Amended	Added sanitization to clarify when certain processes for cleansing materials may be utilized; restructured rule to correct logical fallacy in prior structure; stylistic/grammatical changes.
4101:6-1-23	Amended	Added sanitization to accompany sterilization references and grammatical/stylistic changes.

4101:6-1-24	Amended	Divided cleansing methods into sanitization and sterilization to conform with statutory language; stylistic/grammatical changes.
4101:6-1-25	Amended	Stylistic and grammatical changes.



## 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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International Sleep Products Association  
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