



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):

Requirements for laboratory designation

Rule Number(s): 4101:6-1-20

Date of Submission for CSI Review: 7/28/21

Public Comment Period End Date: 8/11/21

Rule Type/Number of Rules:

New/ 1 rules

No Change/ rules (FYR?)

Amended/ 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Rescinded/ rules (FYR?)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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

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.

The rule establishes the process and criteria by which a laboratory may become designated by the superintendent of the division of industrial compliance to perform laboratory testing for bedding materials under Chapter 3713. of the Revised Code.

- 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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

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)?**

Regulation is necessary in this area in order to ease the administrative burden on bedding registrants by expanding the availability of where laboratory testing under Chapter 3713. of the Revised Code may be performed. At present, laboratory testing required by section 3713.08 of the Revised Code is only permitted at the Division of Industrial Compliance's in-house bedding laboratory. This rule aims to provide alternatives to the Division's bedding laboratory, thereby easing compliance for bedding registrants.

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 bedding registrants and industry stakeholders on how use of private laboratories differs from previous use of the Division's bedding laboratory, and about how having greater access to available laboratory testing has improved their ability to comply with Chapter 3713. of the Revised Code.

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 spreadsheet.

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?**

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

Given the nature of this rule, no scientific data was relied upon to develop it.

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?

Section 3713.04 of the Revised Code permits the designation of established laboratories to perform testing and analysis of bedding materials, as well as establishment of a laboratory within the Division of Industrial Compliance. Up to this point, the Division has utilized an in-house laboratory to perform all required testing of bedding materials. But in order to ease compliance requirements for bedding registrants, this alternative of exclusive use of the Division's laboratory was rejected in favor of providing greater access to available laboratory testing by permitting the designation of private laboratories to perform the testing and analysis required by Chapter 3713. of the Revised Code.

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.

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 the 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.

The Division will inform bedding registrants and industry stakeholders about the process for naming and identifying private laboratories to perform the required testing under Chapter 3713. of the Revised Code. The Division will then work with identified laboratories and provide guidance on how they may apply to become designated by the superintendent to perform bedding testing and analysis.

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

as established laboratories that may consider becoming laboratories designated to perform bedding testing and analysis under Chapter 3713. of the Revised Code.

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

The nature of the adverse impact includes the administrative time spent gathering the required information and materials necessary to apply to become a laboratory designated to perform bedding testing and analysis under Chapter 3713. of the Revised Code. The Division estimates that submission of the application will likely take several hours to gather the necessary information and submit the application.

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.

The Division estimates completing the application will likely take two to three hours.

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 regulation aims to ease the administrative burden felt by bedding registrants by expanding access to available laboratories.

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 Chapter 3713. of the Revised Code does not appear to provide for such an exemption.

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. Additionally, no fee is collected under this rule.

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 this regulation.