CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Commerce, Division of Industrial Compliance

Regulation/Package Title: Bedding and Upholstered Furniture Inspection Rules

Rule Number(s): 4101:6-1-02 to 4101:6-1-25

Date: 11/4/14

Rule Type:

New

XX Amended

XX 5-Year Review

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. **Please briefly describe the draft regulation in plain language.**
   Please include the key provisions of the regulation as well as any proposed amendments.

   Pursuant to Ohio Revised Code Section 3713.04, the rules set forth in Chapter 4101:6 of the Ohio Administrative Code govern the inspections and labeling of bedding and stuffed toys, set forth the means of acquiring and maintaining a license to sell bedding and stuffed toys,

and describes the responsibilities and duties of the Ohio Department of Commerce, Division of the Industrial Compliance when unsafe bedding and stuffed toy products are found.

2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.**

   R.C. 3713.04. 3713.08.

3. **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.***

   N/A

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

   N/A

5. **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)?**

   The public purpose in enacting these bedding rules is protecting consumers from dangerous bedding and stuffed toy products. Pursuant to R.C. Chapter 3713, the Bedding section in the Division of Industrial is charged with establishing rules pertaining to the definition, name, and description of materials necessary to carry out this chapter, setting the initial application fee and annual registration renewal fee, establishing standards, on a reciprocal basis, for the acceptance of labels and laboratory analyses from other states, and establishing standards for sanitization of secondhand articles of bedding and stuffed toys.

   The Bedding section conducts approximately 7,000 safety inspections on an annual basis throughout the state of Ohio. Additionally, the laboratory conducts approximately 6,000 tests annually on products prior to their availability for retail sale in Ohio. As Ohio sees an increase in secondhand retail shops offering more affordable used bedding and stuffed toy items, the Bedding section works diligently to ensure the safety of consumers. These regulations protect the health and safety of all Ohioans with minimal affects upon the industry.

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

   The Department of Commerce believes that these regulations are successful when they ensure the safety of Ohioans with minimal impact upon the industry. The rule package being proposed is substantially the same as the rules which have been in place for many years with only minor corrections and updates. Commerce believes that these regulations continue to

demonstrate every year that they are successful because they continue to ensure the safety of the public.

Development of the Regulation

7. **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 Exhibit B for the list of stakeholders. Stakeholders were contacted in 2012, again on March 14, 2013, and again on November 26, 2014.

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

   The stakeholders were mostly supportive of the most recent version of the rules, which contain far fewer changes than the initial proposals from 2012 and 2013. The Division decided to streamline the process in order to more quickly file these late rules, and informed stakeholders that it will continue discussion on the more complicated issues once the rules are no longer in a delinquent status. Stakeholders supported the move from a semi-annual to an annual reporting requirement, but believe the rules should be updated to promote the use of recycled material that is rendered as clean as new material. They are willing to continue discussions with the Division on this issue in the future. Other stakeholders who commented during earlier discussions suggested more stringent requirements regarding sanitization methods, and that the Division to adopt label terminology consistent with other states. Again, the Division remains committed to continuing its outreach efforts with stakeholders, and will continue to the discussions regarding these more complicated issues.

9. **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 (e.g. ASTM[1]) and other state regulators (e.g. IABFLO[2]) interaction. The bedding and stuffed toy industry agrees with the need for

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[1] ASTM International, known until 2001 as the American Society for Testing and Materials (ASTM) founded, was founded in 1898 and is an international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems, and services.

[2] ABFLO (Association of Bedding and Furniture Law Officials) was founded in 1936 and the name was changed to IABFLO (International Association of Bedding and Furniture Law Officials) in 2003. The association is made up of state officials who are responsible for the enforcement of consumer oriented bedding and furniture laws in their respective states.

IABFLO strives and actively promotes uniformity in laws, terminology, test methods, and enforcement procedures within the various state programs. Uniformity, particularly with respect to terminology on the law label, balances

standardization. This is an outcome of years of development among regulators and manufacturers.

10. 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?

The Bedding rules are governed by R.C. Chapter 3713. The Revised Code mandates that Commerce adopt rules necessary for the implementing the provisions of Chapter 3713. These rules are a product of thorough industry and agency review and the Bedding section received no stakeholder or industry input requesting rule changes or alternatives.

11. 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.***

The rules are not appropriate for performance-based regulatory review.

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

These rules are authorized by R.C. 3713. The Division conducted a thorough review of the Ohio Revised Code and Ohio Administrative Code to ensure there are no other regulations in place pertaining to these specific rules. The Division consulted with stakeholders to ensure no duplication of rules.

13. 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 industry will be notified about any changes to the existing rules. Additionally, information will be provided on the Commerce website.

<u>Adverse Impact to Business</u>

14. 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;

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the rights and responsibilities of industry and the consumer. When generic terms are used to describe filling materials, industry derives a measure of fairness in a competitive market and the consumer is able to shop wisely by comparing like materials.

The impacted community consists of bedding and stuffed toy manufacturers, wholesalers, and resellers.

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

For manufacturers and wholesalers, the adverse impact consists of 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, a small ($35 to $50) annual registration fee, the cost of printing, attaching labels and sterilizing bedding and stuffed toys. Since these requirements already exist under current regulations, no new adverse impact will result from the proposed rule package.

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.

See 14(b).

15. 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 industry standards, which, by necessity, impose a certain level of adverse impact to business. There were no comments or objections from the regulated community.

Regulatory Flexibility

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

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

17. 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 Bedding section strives for voluntary compliance of its regulated customers. In instances where compliance related issues arise, the section works with the customer to remedy the situation prior to enforcement action.

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

The Bedding section is easily accessible for questions via internet, phone and e-mail. Additionally, the section offers "Industry Round-table discussion" in effort to assist small businesses into achieving and maintaining compliance with requirements the Revised Code.

Department of Commerce
Division of Industrial Compliance

John R. Kasich, Governor
David Goodman, Director

Exhibit B – Bedding Stakeholders

International Association of Bedding and Furniture Law Officials (IABFLO)
http://abflo.info/

Toy Industry Association, Inc.
1115 Broadway
Suite 400
New York, NY 10010
ahackman@toyassociation.org

International Sleep Products Association (ISPA)
501 Wythe Street
Alexandria, VA 22314-1917
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