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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | Virginia Department of Health |
| Virginia Administrative Code (VAC) citation(s) | 12VAC5 125-10 |
| Regulation title(s) | Regulations for Bedding and Upholstered Furniture Inspection Program |
| Action title | Amend Regulations Following Periodic Review |
| Date this document prepared | Virginia Department of Health |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Regulations for Bedding and Upholstered Furniture Program (12VAC5-125) outline health, safety, and licensure requirements for mattresses, box-springs, pillows, comforters, cushions, and all upholstered furniture, including products designed for infants and small children. Licensure and inspection activities are performed in order to protect and promote public health through ensuring that all bedding and upholstered furniture is properly labeled with the type of concealed filling materials found in the item. This law also ensures that consumers are informed about any animal hair, feathers, and down used as filling material, and the presence of any concealed material that may be an allergen to the members of the consumer's household. The regulations also protect Virginia consumers from diseases and insect pests spread through unsanitary secondhand bedding and upholstered furniture through permitting, licensure, and inspection of secondhand dealers (sanitizers), reupholsterers, and renovators.

The intent of this regulatory action is to update the regulation by reducing conflicts with other states' bedding and upholstered furniture regulations, clarifying licensing and permitting requirements and

operating standards, and addressing concerns expressed by the General Assembly regarding certain items in the regulation.

The goal of this regulatory action will be to protect the health and safety of consumers of new and secondhand bedding and upholstered furniture in the Commonwealth with a minimally intrusive regulation that is clear and easy to understand and implement.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document. .

None

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

This regulatory action derives from two impetuses for change:

1. A 2017 periodic review of this chapter determined amendments were necessary to improve the consistency and clarity of the regulation; and
2. during the 2018 legislative session, the General Assembly requested the agency consider specific amendments to the regulation (see *Purpose* section for details on items 2 & 3).

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

The Virginia Department of Health has general authority to promulgate regulations pursuant to § 32.1-12 of the Code of Virginia, which states the Board shall make, adopt, promulgate, and enforce regulations necessary to carry out the provisions of this title to protect the public health and safety. Sections 32.1-212 through 32.1-226 of the Code of Virginia require that every entity importing, manufacturing, renovating, or reupholstering any bedding or upholstered furniture or processing or selling any filling material to be used in articles of bedding or upholstered furniture must obtain a license from the Commissioner of the Virginia Department of Health. Every entity renting, selling, or bartering a secondhand item of bedding and upholstered furniture must sanitize the item before commercial disposal, and must obtain a permit to do so from the Commissioner of the Virginia Department of Health. Section 32.1-218 of the Code of Virginia authorizes the Board of Health to establish fees for licensing and

permitting. Additionally, every item of bedding or upholstered furniture sold, rented, or otherwise commercially distributed in the Commonwealth must be tagged with a law label accurately describing the item.

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

Nationwide, one independent locality and 32 other states regulate bedding and upholstered furniture. In the Uniform Registry Number system, these localities all recognize registration numbers issued by Virginia, and allow manufacturers and importers to use these numbers in the licensing and registration of their products across the country. However, law label requirements in Virginia contain conflicts with other states' standards, which creates an undue burden on industry. Eliminating the conflicts between Virginia regulations and national standards will reduce the burden on the regulated industry, bring Virginia in line to national standards, and still be protective of public health.

The text of the regulation is currently vague about certain licensing requirements, including how many licenses must be held by importers and distributors working with multiple manufacturers, and how to license manufacturers under multiple uniform registry numbers that have been issued by other states. Additionally, permitting requirements for reupholsterers and renovators who also need to sanitize secondhand bedding and upholstered furniture are not clear, and the implications of exemptions for individuals who sell their household goods are not well set out. Overall, the language of all licensing, permitting, inspection, and enforcement sections must be revised and streamlined to make administrative procedures more clear to the regulated public.

During the 2018 legislative session, the General Assembly requested that the Virginia Department of Health consider amending the Regulations for Bedding and Upholstered Furniture Program. Specifically, it was requested that the department issue reupholsterers an operating permit instead of a license, and consider reducing the fee associated with this permit. Both of these requests will be considered as part of this regulatory action.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

1. A revision of the required content on bedding and upholstered furniture law labels to more closely align with national standards; this will include removing 'Date of Delivery' from the law label and the revision of certain text size requirements.
2. Streamlining administrative procedures and existing requirements for the licensing, permitting, and inspection of manufacturers, distributors, importers, sanitizers, sterilizers, renovators, and reupholsterers to reduce administrative burden for regulants, increase efficiency for VDH staff, and clarify the requirements of the regulation.
3. An update to the standards for sanitizers, renovators, and reupholsterers of used bedding and upholstered furniture; this will include shifting reupholsterer and renovator licenses to operating permits, outlining when these reupholsterers and renovators must also obtain a permit to sanitize, and clarifications to the language describing the health and safety standards for the sale of secondhand bedding and upholstered furniture.

- 4. An analysis and potential revision to the current fees charged for licenses and permits, including a potential decrease in fees for permittees who sell or remake used bedding and upholstered furniture.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

Alternatives to amending this regulation would be to leave the regulation in place without any revision. However, this will result in maintaining a regulation with burdensome and unneeded standards for law labels that conflict with requirements in other states, and a lack of overall clarity in administrative and licensing/permitting requirements. The proposed revisions should eliminate nationwide conflicts, streamline administrative processes, and increase the clarity of health and safety standards for facilities that sell used bedding and upholstered furniture.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review

Public Participation

Please indicate whether the agency is seeking comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives.

Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulation.

The agency is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to **Olivia McCormick, Program Manager, 109 Governor Street, Richmond, Virginia 23219, phone number: 804-864-8146, email address: olivia.mccormick@vdh.virginia.gov**. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.