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Proposed Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC5-125
VAC Chapter title(s)	Regulations for Bedding and Upholstered Furniture Inspection Program
Action title	Amend regulations following Periodic Review
Date this document prepared	July 29, 2019

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Regulations for Bedding and Upholstered Furniture Inspection 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 new 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 and inspection of secondhand dealers (Sanitizers), Reupholsterers, and Renovators.

The intent of this action is to: i) update the regulation by reducing conflicts with other states' bedding and upholstered furniture regulations, ii) transparently outline existing requirements for use of animal hair, feathers, or down, iii) establish consumer notifications on law labels for the use of reclaimed and reprocessed materials, iv) clarify licensing and permitting requirements and operating standards, and v) address concerns expressed by the General Assembly and Office of the Attorney General regarding certain items in the regulation. The overarching 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

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

None

Mandate and Impetus

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, or board decision). 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 legality, implementation, 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).

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency'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 the title to protect the public health and safety. Sections 32.1-212 through 32.1-226 of the Code of Virginia require 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 (with no exemptions for antiques established in Code). 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

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

Nationwide, one independent locality and 32 other states regulate bedding and upholstered furniture. These localities use the Uniform Registry Number (URN) system, in which all localities recognize registration numbers issued by other localities, and allow Manufacturers and Importers to use these numbers in the licensing and registration of their products across the country. These numbers are used on the law labels required on bedding and upholstered furniture. However, law label requirements in Virginia contain conflicts with other states' standards, which creates an unnecessary 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.

Additionally, during development of the proposed amendments, the regulated industry and representatives from other state's bedding and upholstered furniture regulatory programs requested Virginia address standards for reclaimed and reprocessed filling materials in the amendments. Public demand for products made with post-consumer materials has increased in recent years, and is only expected to further increase in the future. New technologies have allowed reclaimed and reprocessed materials, such as polyester generated from recycled plastic and post-consumer reclaimed down, to be processed with methods that produce products with equal or better quality and cleanliness than those made with virgin materials. The language of the regulation must be updated to reflect these modern practices in industry.

The text of the regulation is currently vague about certain licensing requirements, implying multiple licenses must be held by Importers and Distributors working with multiple Manufacturers. 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 through consignment are not well set out. Overall, the language of all licensing, permitting, inspection, and enforcement sections require revision and streamlining 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 12VAC5-125. Specifically, it was requested that the department issue Reupholsterers an operating permit instead of a license (this is a semantic change only), and consider reducing the fee associated with this permit. Both of these requests were addressed in the proposed amendments.

Additionally, the Office of the Attorney General stated in the 2017 Periodic Review of this regulation that the Board of Health does not have the authority to exempt antiques from this regulation. As this regulation currently has an exemption for antiques, this language must be removed to align with the Board's statutory authority.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The proposed amendments reorganize the way information is presented, add a new sections to outline variance procedures, repeal sections to remove obsolete information and duplication, and improve grammar and ease of understanding by the general public and regulated industry.

Substantive changes include:

1. Revision, addition, and deletion of definitions as required to support other amendments;
2. Establishment of standards for reclaimed and reprocessed new materials;
3. Removal of unauthorized exemption for antique items;
4. Revision and clarification of license and permit application procedures;
5. Re-designating Reupholsterer and Renovator authorizations as permits (currently licenses, semantic only);
6. Removal of requirement for Importers and Distributors to obtain multiple licenses when they contract with multiple Manufacturers;
7. Reorganization and clarification of the agency's rights to inspect under this chapter;
8. Moving law label templates into cohesive tables and removal of provisions contradictory to national standards;
9. Creation of law label template for reclaimed and reprocessed products;
10. Clarification of existing sanitization procedures for secondhand bedding, combining two sections of sanitization requirements into one section (repealing and relocating);
11. Establishment of new general methods for sanitization (heat and steam) and pathway for new specific products and processes to be approved through policy;
12. Transparently outlining existing standards for sterilized animal hair, feathers, and down; complying with national standards;
13. Establishment of enforcement procedures compliant with the Virginia Administrative Process Act;
14. Repealing unnecessary descriptions of agency authority and obsolete administrative and enforcement procedures;
15. Adjusting fee schedules to ensure Importer and Distributor license revenue remains budget neutral and the program's operating revenue will not change; exempting single-employee Renovators and Reupholsterers from permit fees;
16. Repealing an obsolete "Documents Included By Reference" terminology manual no longer in use; and
17. Revision of the regulation title for improved grammar when the chapter is referenced in text.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage of the proposed amendments is that they will provide organization and clarity to the existing text, which will better facilitate the public’s and regulated industry’s understanding of the regulation.

Under the amendments, Importers and Distributors will maintain one license. These license holders will save significant time and effort in comparison to their current administrative burden of maintaining multiple licenses (when they contract with multiple Manufacturers; in some cases, up to 86 fewer licenses will be required for an importing entity). Fee adjustments will ensure no overall revenue change associated with this amendment.

The amendments will also provide industry a compliant pathway for the use and labeling of products with reclaimed and reprocessed filling materials, which are not currently addressed in the regulation. These new provisions will respond to and address a growing sector in the industry, and better meet public demand for safe and healthy eco-friendly products.

Antique dealers will experience some disadvantage through the elimination of the current exemption for antiques. Businesses that are not currently regulated by the agency (because they do not sell non-antique bedding or upholstered furniture) will be required to sanitize regulated items and retain a Sanitizer permit. However, there is no option for this change, as it is required to bring the chapter under the limits of its statutory authority. Multiple changes to sanitizing requirements, most notably the addition of steam as a sanitizing method, are designed to mitigate these disadvantages for businesses that do not want to use the currently approved method of spraying items with isopropyl-alcohol based chemicals.

The agency will benefit from the clarity of the revisions, as they may reduce the time and effort staff spend on explaining procedures that are not well outlined in the current text. The agency also expects to observe a slight reduction in licensing administrative procedures (e.g. returned, incomplete license applications).

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements that exceed applicable federal requirements; there are no federal requirements that directly overlap with the scope of this regulation.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no state agencies which bear any identified disproportionate material impacts.

Localities Particularly Affected

There are no localities which bear any identified disproportionate material impacts.

Other Entities Particularly Affected

There are no other entities which bear any identified disproportionate material impacts.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources 	<p>a) Per § 32.1-218, all fee revenue is held in a separate fund for the expenditures of administering the bedding program (Agency cost code 102P). To construct the proposed fee schedule, current (2018) Importer and Distributor accounts were analyzed for distributions of the number of licenses held by each discrete entity; various fee schedules were modeled on this distribution until an ideal schedule was selected. This schedule has the least total fee change for entities, results in neutral revenue, and reflects the cost to the agency of administering each account. Currently, these entities pay \$100 per license; one license corresponds to one Manufacturer Uniform Registry Number (URN) from which they import or distribute. In the new schedule, all URNs from which they import or distribute from will be tied to a singular Importer or Distributor license with one fee. A sliding scale was selected to reduce mid-year administrative burden to industry when Importers and Distributors add new Manufacturer URNs to their license. The proposed fee schedule will allow this flexibility and will result in negligible income difference compared to the current fee schedule (modeled outcome with 2018 licenses: \$212,600 under current schedule vs. \$216,180 for new schedule). Creation of a fee exemption for single-employee Renovators and Reupholsterers is not expected to have a significant fiscal impact to the agency. The agency has no estimate</p>
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	<p>of how many permit holders will qualify for this exemption, but total revenue for these permit types is less than 1% of all fee revenues (\$4,500 of \$695,865 for active accounts at time of analysis).</p> <p>b) The one-time costs to administrative and datakeeping systems associated with fee changes are expected to be approximately \$8,000. Bringing antique dealers under regulation will require one-time costs for outreach, inspector travel to seek out and communicate with unpermitted entities, and initial permitting costs. These costs are estimated at \$50,000.</p> <p>c) One-time costs associated with permitting for antique dealers will exceed the revenues from those permits by approximately \$20,000; however, these costs are expected to be able to be absorbed by the existing total revenues of the program.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no impacts to any other state agency.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Fee adjustments are designed to be revenue neutral. Text changes will result in greater clarity to the regulated industry, which is anticipated to slightly reduce the administrative burden of the program (in returned, incomplete license applications).</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no impacts on localities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There are no impacts on localities other than a general increase in clarity for regulated entities and members of the public.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Three sectors will be most affected by this regulatory change: 1. Antique dealers currently not regulated under this chapter that will require a Sanitizers permit (\$60) and must sanitize secondhand bedding and upholstered furniture before sale. 2. Importers and Distributors who will no longer have to maintain a separate license for each</p>
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	<p>URN from which they import or distribute. 3. Companies that wish to make, sell, and label products with reclaimed and reprocessed filling materials.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. 	<p>As antiques are not currently regulated, the agency has no internal data source for the number of entities operating in the Commonwealth. There is no Virginia chapter of any antique dealer’s trade or professional organization. Antiques.com lists approximately 500 vendors in the Commonwealth. The agency expects all of these entities qualify as small businesses. For the 2018 license year, there were 690 discrete entities with Importer or Distributor licenses. The majority of these entities may be small businesses with less than 500 employees, but the agency does not collect information on the size of these businesses.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	<ul style="list-style-type: none"> a) Importers and Distributors will see significant costs savings from only having to maintain one license, but these costs cannot be generalized, as they will vary on the individual business’s size and internal structure. Currently, these entities pay \$100 per license, and entities maintain 1-84 licenses each. There will be little to no (<\$5) cost associated with the new requirement for keeping a record of sanitization events in a delivery vehicle; this sanitization was already required, and only the logging of the event is a new provision. Newly regulated antique dealers will require an annual Sanitizer permit (\$60). b) There are no real estate development implications for this regulatory action. c) The majority of the fees are unchanged, with implementation of a sliding fee scale, Importers and Distributors will pay a slightly higher license fee. Contacted stakeholders with the largest increased fees report satisfaction with this proposal, as administrative savings associated with only having one license to maintain more than offset the fee increase. The agency presented these fees to industry at a national conference and in a public webinar, and have received no objections to the slight increases. Reupholsterers and Renovators

	<p>with no additional employees (one-individual business) will be exempt from the \$25 fee; this action was taken in response to a request for fee reductions for this permit category from the General Assembly in 2018.</p> <p>d) Newly regulated antique dealers will incur the cost of purchasing sanitizing equipment, such as the spray chemical SteriFab (~\$40 for 48 oz.) or a hand-operated steamer (\$50-\$100, depending on type purchased).</p> <p>e) There is no anticipated time required to comply with new requirements, with the exception of newly-regulated antique dealers establishing proper sanitizing procedures in their businesses.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The major benefits of these changes are:</p> <ol style="list-style-type: none"> 1. Reduction in labeling conflicts for bedding and upholstered furniture industry, 2. Pathway for use of reclaimed and reprocessed materials in manufactured products, 3. Significantly reduced administrative burden on Importers and Distributors, 4. More options for approved methods of sanitization, and 5. Increased clarity in existing standards.

Alternatives to Regulation

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. Leaving the exemption for antique dealers in place is not a viable option; the regulation must lie within its designated statutory authority. 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.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

1. There are minimal reporting requirements associated with the proposed regulation. The proposed amendments streamline the licensing process for Importers and Distributors, reducing the administrative burden borne by industry. The compliance requirements of the proposed regulation should not be reduced or simplified, as the agency believes they establish the minimum standards required to protect public health and safety.
2. No deadlines have been modified in the proposed amendments.
3. As noted above, reporting (licensing application) requirements in the proposed amendments have been simplified and consolidated.
4. Design and operational standards cannot be further simplified or replaced; the requirements of the regulations are minimal and already partially performance-based. The proposed amendments do not place any significant additional procedural requirements in place. Clarifications and new provisions establish allowances for use of reclaimed and reprocessed materials, such as polyester made from reprocessed plastic water bottles. Additionally, provisions for different methods of sanitizing have been created to allow maximum flexibility for businesses, including the newly-regulated antiques sector.
5. Small businesses can readily comply with the requirements of the proposed amendments. In consideration of the request of the General Assembly (see Mandate and Impetus), self-employed Renovators and Reupholsterers with no employees have been given an exemption to permit fees.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s

decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Not applicable.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
	There were no comments received on Town Hall or directly by the agency during the public comment period of the Notice of Intended Regulatory Action (NOIRA) from 1/21/2019 – 2/20/2019.	

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Virginia Department of Health is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

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://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Olivia McCormick, 109 Governor Street, 5th Floor, Richmond VA 23219, 804-864-8146 (phone), 804-864-7475 (fax) and 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 this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or

agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
CHAPTER TITLE		Regulations for Bedding and Upholstered Furniture Inspection Program	<p>Intent- Changes title to Regulations for Bedding and Upholstered Furniture.</p> <p>Rationale- Updated to sound grammatically correct in sentences referencing the chapter.</p> <p>Impact- None.</p>
12VAC5-125-10 Row 1 of 3 for this section DELETIONS		<p>Definitions. "Antique" "As is" "Board" "Commissioner" "Department" "Designee or designated officer or agent" "Inspector" "Soiled or torn" "Used" "Wholesaler"</p> <p>"Filling material definitions will be in accordance with definitions published in the 2004 Edition of the International Sleep Products Association Handbook."</p>	<p>Intent- The definitions and statement listed in column 3 will be deleted.</p> <p>Rationale- The terms are no longer used in the regulations, or are changed to other definitions (Commissioner to Health Commissioner). The referenced handbook is no longer in use by the Bedding Program or industry.</p> <p>Impact- Streamlined regulation with no erroneous or unnecessary references.</p>
12VAC5-125-10 Row 2 of 3 for this section EDITS		<p>Definitions. "Bedding" "Bedding Program" "Distributor/wholesaler" "Filling material" "Importer" "Law label" "License" "Licensing state" "Manufacturer" "New" "Permit" "Person"</p>	<p>Intent-The definitions for the terms listed in column three will be amended.</p> <p>Rationale-The changes reflect current use of the terms, grammar improvements, changes in terminology, and/or using easier to understand word choices.</p> <p>Impact- Improved understanding and application of the regulations.</p>

		<p>"Renovator" "Retailer" "Reupholsterer" "Secondhand" "Sell" "Shoddy" "Shoddy pad" "Supply dealer" "Uniform registry number" "Upholstered furniture"</p>	
<p>12VAC5-125-10</p> <p>Row 3 of 3 for this section</p> <p>ADDITIONS</p>		<p>Definitions. N/A</p>	<p>Intent- Adds new definitions for: "Health Commissioner" "Reclaimed and reprocessed".</p> <p>Rationale- Relocation for stricken definition "Commissioner".</p> <p>New definition for "reclaimed and reprocessed" adapted from Global Recycling Standard. The term "recycled" is currently prohibited in several states that regulate bedding and upholstered furniture, so "reclaimed and reprocessed" was chosen to avoid national conflicts.</p> <p>Impact-Introduces concept of reclaimed and reprocessed into the chapter.</p>
<p>12VAC5-125-20</p>	<p>Repealed</p>	<p>Administration. Describes rights of the Board to enact the regulations.</p>	<p>Intent- - Removes language unnecessary to the regulation.</p> <p>Rationale- These authorities are established in §§32.1- 212 through 226; Statements are not integral to the chapter.</p> <p>Impact- None. Removal of the language streamlines the chapter, but does not affect any of the described authorities.</p>
<p>12VAC5-125-30</p>		<p>Powers and procedures of chapter not exclusive. The Board may pursue enforcement options not listed in the chapter.</p>	<p>Intent- Changes title to <u>Compliance with the Virginia Administrative Process Act</u> and outlines the chapter will be enforced in accordance with this act.</p> <p>Rationale- All enforcement procedures must be compliant with the Administrative Process Act.</p> <p>Impact-None.</p>
<p>12VAC5-125-40</p>		<p>Exemptions. Establishes list of exemptions from chapter, includes exemption for</p>	<p>Intent-Removes exemption for antiques.</p>

		<p>antiques, and an individual selling personal household goods.</p>	<p>Includes reference to consignment in exemption for an individual selling personal household goods. Adds two exemption types relocated from section 100.</p> <p>Rationale-The regulations may not exempt antiques; this exemption is not provided for in the Code of Virginia, which directs the Board to regulate secondhand items (thereby including antiques). Consignment is the sale of an item by an individual, through a broker, and is equivalent to sale through a yard or garage sale, or listing on online self-sell platforms (examples exempt through the provision for individual sale). The exemption for individuals selling household items currently applies to consignment; inclusion of the new language is for clarity. Relocated exemptions logically belong in this exemptions section.</p> <p>Impact- Antique dealers selling bedding and upholstered furniture will have to sanitize articles and obtain a Sanitizer permit. Requirements for consignment will be more transparent; no change in regulation results from the amendment.</p>
<p>12VAC5-125-50</p>		<p>Licenses, permits, and registration numbers. Establishes requirement for licenses and permits. Outlines transferability, application procedures, and issuance procedures for licenses and permits. Establishes that Importers and Distributors must obtain a separate license for each branch factory they contract with (i.e. each Manufacturer/URN they import or distribute from).</p>	<p>Intent- Revises section title to <u>Licenses, permits, and uniform registry numbers</u>. Reorganizes and reorders subsections. Changes terminology for Reupholsterer and Renovator authorizations from <u>license</u> to <u>permit</u>. Clarifies that the processes used by Sanitization and Sterilizer permit applicants must comply with the regulations. Outlines use of uniform registry numbers. Removes requirement for Importers and Distributors to obtain a separate license for each branch factory they contract with (i.e. each Manufacturer/URN they import or distribute from).</p> <p>Rationale- The terminology change of license to permit was requested by the 2018 General Assembly; the agency</p>

			<p>agrees permit better suits the operations of a facility; license carries the connotation of an authorized entity, rather than an operating facility. Permit application requirements (processes must comply) are currently implied in regulation; amendments will ensure this provision is more clearly stated.</p> <p>Uniform registry number assignment and use varies between licensee types (existing national practice), and this should be clearly stated in the chapter.</p> <p>The requirement for Importers and Distributors to obtain a separate license for each branch factory they contract with is a significant administrative burden to industry. This requirement is not reflected in the Code language requiring licensure (§32.1-217).</p> <p>Impact- Regulation is clearer, more transparent, and easier to understand. Terminology for Reupholsterers and Renovators is aligned to other regulated counterparts (operating facilities v. licensed entities). Revising Importer and Distributor licensure requirements lifts a significant administrative burden to industry. There is no revenue impact associated with this change (see section 180).</p>
12VAC5-125-60		<p>Revocation of a license or permit. Outlines revocation of licenses and permits.</p>	<p>Intent- Revises section title to <u>Enforcement, Notices, Informal Conferences</u> (second and third term capitalized because they are proper nouns); content updates with modern language on revocations, suspensions, and informal conferences.</p> <p>Rationale- Revised procedures are more reflective of current practice and are more inclusive of options and procedures provided by the Administrative Process Act; added language is adapted from other Environmental Health Regulations.</p> <p>Impact- None.</p>
12VAC5-125-70	Repealed	<p>Application after revocation. Describes permit or license application after revocation</p>	<p>Intent- Content addressed in section 60.</p>

			<p>Rationale-Content more applicable in section 60.</p> <p>Impact-None.</p>
12VAC5-125-80		<p>Inspections. Outlines six types of complaints that may result in an inspection.</p> <p>Late or nonrenewal of permit may result in an inspection.</p> <p>Permit holders must self-report any infestations at their place of business to the Bedding Program.</p>	<p>Intent-Revises and restructures entire section. Complaint types will be consolidated to one item. Inspection types will be organized in new structure: inspections of unlicensed/unpermitted entities, and inspections of licensed/permitted entities. Infestation reporting will be relocated to section 100. Adds inspection documentation requirements.</p> <p>Rationale- Listing six types of complaints was unnecessary; all types are more effectively described once, simply as complaints. Restructuring the presentation of inspection types does not reflect change from the current regulation; the edit is for clarity only. Infestation reporting is more logically located in section 100 with other operating standards for secondhand businesses. Statement on documentation added to improve transparency on public expectations of the enforcement of this chapter.</p> <p>Impact- Increase in organization, simplicity, and clarity.</p>
12VAC5-125-90 Row 1 of 2 for this section TEXT		<p>Law labels conforming to the Virginia law. Description of general provisions for law labels, when they must be attached; includes both new and secondhand law labels.</p>	<p>Intent- Changes section title to <u>Law label requirements</u>. All content will be reorganized and rephrased; all requirements remain the same, except: Reference to requirements for bold font will be removed. Adds three choices for declaring a percentage of new filling materials as “reclaimed and reprocessed” (all are optional):</p> <ol style="list-style-type: none"> 1. Statement in ‘Other Information’ section of standard new product law label (table 1; see next row for label table changes), 2. Use of new ‘Reclaimed and Reprocessed’ law label (table 2), or 3. Both.

			<p>Rationale- Reorganization of content and renaming of section was necessary to update and modernize language, and to improve clarity and sentence structure.</p> <p>Bold font is not a clearly evaluated standard (non-bold font on one tag may be printed with same intensity as bold on a different tag). This change will not mean bold is not allowed, only that Virginia will not regulate bold font.</p> <p>Standards for declaring reclaimed and reprocessed materials have been requested by industry; however, restrictions in place in other states require these standards be introduced thoughtfully, in a manner allowing a tiered approach:</p> <ol style="list-style-type: none"> 1. All language on reclaimed and reprocessed is optional. Reclaimed and reprocessed materials are new materials, and use of the new materials law label with no other addition is legal. 2. Where a product will be sold in Virginia <i>and</i> states that allow the reference to reclaimed and reprocessed in the 'Other Information' section, this statement can be added to the new materials law label. 3. Where the product will be sold only in Virginia, or in Virginia and in other states without a bedding law or law label standards, (and in the future, in any state adopting the green font reclaimed and reprocessed label), the product can use the green font reclaimed and reprocessed law labels. 4. To ease burden on manufacturing, both may be used on products sold in Virginia (Manufacturers may attach both and remove one for sale in other states, or other states may allow the reclaimed and reprocessed label only if the standard national new label is also present). <p>Impact- Virginia better responds to public demand, industry requests, and a key component of bedding and upholstered furniture law: consumer notification.</p> <p>These standards pave the way for national acceptance of reclaimed and</p>
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			<p>reprocessed materials in bedding and upholstered furniture products. Green-font labels will draw consumer attention and increase the relevancy of law labels to the public. Several states have expressed interest in adopting the reclaimed and reprocessed standards and templates established in this regulatory action.</p>
<p>12VAC5-125-90</p> <p>Row 2 of 2 for this section</p> <p>TABLES</p>		<p>Law labels conforming to the Virginia law.</p> <p>Seven “Attachments”, each with a table demonstrating a law label template, footnotes, and margin notes. Each attachment has identical margin notes. Template types/names:</p> <ol style="list-style-type: none"> 1. All new material, 2. All new material articles with extra cushions as an integral part of unit, 3. Animal hair, feathers, or down and other materials requiring sterilization, 4. Secondhand items remade or renovated for a consumer, 5. Secondhand items, 6. Secondhand items remade or renovated for resale, and 7. Filling materials (in bulk). 	<p>Intent- Removes all seven existing law label template tables (referred to as “Attachments” in text, and all footnotes associated with them. Adds three new tables compiling templates for law labels</p> <p>Table 1- New (not secondhand) bedding and upholstered furniture labels</p> <p>Table 2- New (not secondhand) OPTIONAL bedding and upholstered furniture labels for entities that choose to declare a percentage of new materials are reclaimed and reprocessed.</p> <p>Table 3- Secondhand bedding and upholstered furniture labels.</p> <p>All individual law label templates are identical to pre-amendment versions, except: “Date of Delivery” and font size requirement for certification statement will be removed. Items will be re-ordered on secondhand product law labels, and a combination Sanitizer and Renovator/Reupholsterer law label will be established.</p> <p>Rationale- The existing seven tables are difficult for regulated industry to review and compare. The repetition of footnotes gives the illusion of varying requirements for each tag. The consolidation into three tables will make it easier to find the pertinent label for each product. Removed items (date of delivery and font size for certification statement) are not required elsewhere in the country, have no impact to public health, and represent a burden to industry; law label printing is a significant cost to industry, and there is no reason Virginia should require a different law label template than other states.</p>

			<p>Creating an optional label, with “reclaimed and reprocessed” at the top of the label, provides maximum notification to the consumer about the type of concealed filling materials in the item. This label may not yet be legal in several states (although they have expressed interest in changing their laws to model new tags established in this regulatory change), so it is deemed optional. Manufacturers may attach it when the product will not be sold in a state where it is not a legal law label (also see above row on section 90 text changes for context on this label change).</p> <p>Reordering items on secondhand labels and creating a combination Sanitizer and Renovator/Reupholsterer label in column 3 of table 3, will make the labels easier to compare and use.</p> <p>Impact- Industry will not have to maintain compliance with certain law label requirements that are not required elsewhere in the country, and that do not impact public health. Industry will have multiple legal options to declare that a percentage of the new materials are reclaimed and reprocessed, with built in flexibility for adapting to national standards, and the continuing evolution of bedding and upholstered furniture laws in America. No impact for secondhand label changes.</p>
<p>12VAC5-125-100</p>		<p>Sanitization of Used Bedding and Upholstered Furniture.</p> <ol style="list-style-type: none"> 1. Secondhand products must be sanitized, tagged, and logged, 2. Use of two spray products, named by brand (SteriFab and Microban), are approved sanitizing methods, and 3. Description of two exemption types. 	<p>Intent-Changes section title to <u>Secondhand bedding and upholstered furniture</u>.</p> <p>Adds language to clarify when reupholstered and renovated items must be sanitized.</p> <p>Removes brand names, outlines general process by which a person may apply for approval of sanitizing product (specific brand name or specific methodology), and outlines two categories of approved methods: isopropyl alcohol-based spray, and thermal (heat or steam).</p> <p>Relocates requirement for delivery vehicle sanitization from section 110, adds requirement for vehicle sanitizing events to be logged, and removes date</p>

			<p>sold tracking requirements for all sanitizing logs. Relocates requirement that premises must be clean from section 110. Strikes exemptions (moved to section 40).</p> <p>Rationale- Name change reflects true scope of section (all secondhand industries: Sanitizers, Reupholsterers, and Renovators). Distinction of when remade items require sanitization is existing, but was previously only outlined in the titles of law label templates, and thus was not immediately obvious. Brand names should not be included in regulation; the currently listed products (SteriFab and Microban) will still be approved for use, and are described by the isopropyl alcohol spray category. Heat and steam are two established methods for pathogen destruction (and killing bedbugs and their eggs; serious concerns for secondhand furniture). Heat is already in use by the secondhand rental industry (on a case by case basis), and steam is added for consideration of antique dealers working with older fabrics where conservation is a concern. Relocated secondhand industry items create one section for secondhand item provisions (previously two, separated by a section on animal-derived filling materials). The requirement for vehicle sanitization logging was added to ensure there is a method to check compliance for the existing requirement to sanitize the vehicle; this will create little to no burden for industry. The prescriptive log requirement (date sold), used by inspectors to cross-check current inventory and logged sanitization events, was replaced with a performance measure (easily identifiable connection between log and inventory) to decrease burden on regulants. The stricken provision (date sold) is a common complaint of the regulated industry. Exemptions relocated, as they belong in exemptions section.</p>
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12VAC5-125-110		<p>Sterilization of new animal hair, feathers and down. Animal-derived filling materials must be sterilized before use.</p>	<p>Intent-Revises existing provision for grammar. Adds subsection on approved processes for sterilization; including pressurized steam, streaming steam, heat, and washing.</p> <p>Rationale- The methods added to this section are taken from sterilization laws in Utah and Pennsylvania. Without standards in place, past Virginia practice has been to send applicants for Sterilizer permits to Pennsylvania to obtain a permit before issuing one in Virginia. This practice evolved from Pennsylvania refusing reciprocity for Virginia-issued sterilization permit URNs, as Virginia had no standards for Sterilizers. This practice is common in other states as well. Utah has recently added Pennsylvania standards to their law to initiate reciprocity for Sterilizer URNs with Pennsylvania. Adding these standards, which are already national practice, will lead to transparency of current practice, and opportunity for future reciprocity of Sterilizer URNs with Pennsylvania and other states.</p> <p>Impact- Standards for sterilization will be transparent to regulated industry. Virginia will no longer have to advise applicants that they should seek permitting in Pennsylvania prior to obtaining a permit in Virginia. There will be no process impact on regulants, as the described methods are already standard practice in industry.</p>
12VAC5-125-120	Repealed	<p>Separation and storage of new and sanitized items.</p>	<p>Intent- Items 1 and 2 will move to section 100.</p>

		<p>1. Separation of sanitized and unsanitized goods, 2. Delivery vehicle sanitization, and 3. Mattresses must be stored six inches or the height of one standard pallet off the floor.</p>	<p>Rationale- (Items 1-2) All sanitization provisions should be in one section of the regulation for ease of access.</p> <p>Impact- None.</p>
12VAC5-125-130		<p>Violation of regulations. Establishes (in different order in section): 1. Retailer responsibility for compliance, 2. Authority to order Sanitizers with significant violations to cease selling secondhand merchandise until violations are corrected (placarding), 3. Violations of this chapter are also violations of the Virginia Consumer Protection Act, 4. Authority to order a violating product to be returned to a Manufacturer, 5. Authority to refuse to issue a permit or license to persons who fail to appear in court to answer a charge of violation, and 6. Violations of this chapter are Class 2 misdemeanors.</p>	<p>Intent-Provides grammar and word choice updates for items 1- 3. Removes reference to items 4-6.</p> <p>Rationale- Increases clarity and simplicity of items 1- 3. Items 4- 6 are not integral to the chapter. All three enforcement outcomes are appropriate for the most flagrant, continued violations with serious threat to health; they have not been sought in any bedding regulation violation since the creation of this chapter. Inclusion is misleading to the regulated public.</p> <p>Impact- No impact for revision to items 1- 3. The removal of items 4-6 does not impede the Board or Commonwealth’s authority to pursue these actions.</p>
12VAC5-125-140	Repealed	<p>Enforcement of regulation. Contains explanations on nature of Commissioner-issued enforcement orders, other enforcement options available to the Commissioner, and outlines differences between informal hearings and adjudicatory hearings.</p>	<p>Intent- Removes language unnecessary to the regulation.</p> <p>Rationale- The described enforcement outcomes are possible for any violation of Title 32.1; inclusion in a bedding-specific chapter is unnecessary. The outcomes are appropriate for the most flagrant, continued violations with serious threat to health; they have not been sought in any bedding regulation violation since the creation of this chapter. Inclusion is misleading to the regulated public. Statements on hearings are not integral to the chapter, and provide unnecessary detail.</p> <p>Impact-None. The removal of enforcement option references does not impede the Board or Commonwealth’s authority to pursue these enforcement avenues.</p>

			Hearing rights are established in the Administrative Process Act, referenced in section 20 of this chapter.
	12VAC5-125-145	N/A; new section	<p>Intent- Establishes procedures for applications for variances to the regulations, and agency dispensation requirements for variances.</p> <p>Rationale-Persons may request variances to the regulations; these may be granted by the authority of §32.1-12. The regulated public should be informed about how to apply for variances, how the agency must to respond to the request, and applicant's rights under the Administrative Process Act.</p> <p>Impact- Regulated public understands these procedures; there is no effect to the agency, as these practices are already in place, and the language is taken from other Environmental Health regulations.</p>
12VAC5-125-150	Repealed	<p>Request for hearing. Procedures for requesting a hearing; hearing must be requested within 15 days of the decision to be challenged.</p>	<p>Intent- Removes language and deadline unnecessary to the regulation.</p> <p>Rationale- Statement is not integral to the chapter, and establishes an unrealistic deadline for requests (regulated industry has significant presence in Southeast Asia; mail service can take a month).</p> <p>Impact- None, other than the removal of the deadline. These rights are established in the Administrative Process Act, referenced in section 20 of this chapter.</p>
12VAC5-125-160	Repealed	<p>Hearing as a matter of right. Permit and license holders may request adjudicatory or informal hearings to contest any decision made subject to the chapter. Those not holding these authorizations may only request hearings if they can prove they have been harmed by a decision made subject to the chapter.</p>	<p>Intent-Removes language unnecessary to the regulation.</p> <p>Rationale-Statement is not integral to the chapter, and provides unnecessary and undesired detail about who has a right to a hearing.</p> <p>Impact-None. These rights are established in the Administrative Process Act, referenced in section 20 of this chapter.</p>
12VAC5-125-170	Repealed	<p>Penalties, injunctions, civil penalties and charges for violations.</p>	<p>Intent- Removes references to enforcement outcomes extremely</p>

		<p>Entities violating this chapter may be subject to civil penalties (fines, or charges imposed by the Board of Health) and criminal penalties (up to a class 2 misdemeanor).</p>	<p>unlikely to be employed for violations of this chapter.</p> <p>Rationale- The described outcomes are possible for any violation of Title 32.1; inclusion in a bedding-specific chapter is unnecessary. The outcomes are appropriate for the most flagrant, continued violations with serious threat to health; they have not been sought in any bedding regulation violation since the creation of this chapter. Inclusion in is misleading to the regulated public</p> <p>Impact-None. The removal of these references does not impede the Board or Commonwealth’s authority to pursue these enforcement avenues.</p>
<p>12VAC5-125-180</p>		<p>Fees.</p> <p>Manufacturers, Importers, and Distributors pay \$100 per license.</p> <p>Sanitizers pay a \$60 fee.</p> <p>Supply Dealers, Renovators, and Reupholsterers pay \$25.</p>	<p>Intent- Importers’ and Distributors’ fees will be changed to a sliding scale; the more Manufacturers/URNs they import or distribute from, the higher the fee.</p> <p>Very small Renovators and Reupholsterers (sole individual, no additional employees) will be excluded from permit fee.</p> <p>Sterilizers pay a \$60 fee.</p> <p>Rationale- Importer and Distributor fees must be adjusted to maintain current operating revenue while allowing the amendment to section 50 removing the requirement for these entities to maintain multiple licenses. A sliding scale allows some mid-year URN additions without mid-year fees. The reduction in the Renovator and Reupholster fee was requested by the General Assembly in 2018. Sterilizers were traditionally charged the Sanitizer permit fee, as these items have been grouped together in Code and Regulation, but there has not been a specific line item for the Sterilizer permit in the fee scale.</p> <p>Impact- No impact, fee scale is designed to <u>maintain revenue that is budget neutral</u> from Importer and Distributor licenses (see Economic Impact table in this document). Permit fees from Renovator and Reupholsterer permits are a negligible</p>

			<p>part of the chapter's revenues (%1), and can be absorbed by the program, even if all permit holders are eligible for the fee exclusion. No change for Sterilizer permit fees.</p>
DIBR	Repealed	2004 Manual of Labeling Laws, Registration Requirements, International Sleep Products Association.	<p>Intent- Removes Document Incorporated by Reference.</p> <p>Rationale- Manual is no longer in use. Rapid technological development of filling materials call for flexibility. Honesty in labeling and use of generic trade names has been a practiced requirement in Virginia for the recent history of the administration of this chapter. Virginia does not test filling materials in a laboratory setting, and cannot enforce specific and technical aspects as may be established by third-party documents such as the repealed document.</p> <p>Impact- None. Manual of filling material definitions has not been in use. Filling materials are listed by generic trade name (section 90).</p>