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Final 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	February 1, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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), hereinafter referred to as the Regulations, 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 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 is 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.

"VRRM" refers to the Virginia Register of Regulations Form, Style and Procedure Manual for Publication of Virginia Regulations (April 2014).

"VDH" means the Virginia Department of Health.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The State Board of Health approved this action to Amend Regulations Following Periodic Review on March 23rd, 2023.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

The only change to the information reported at the Proposed stage is as follows:
During the Periodic Review, the Office of the Attorney General noted that the Board did not have the authority to enforce the exemption of antiques. HB 2173 and SB 1016 of the 2023 General Assembly codifies the Board's authority to exempt "antiques" as defined in the final proposed regulations, and thus the potential legality of the existing exemption for antiques is no longer an impetus of concern for this action.

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 State Board of Health ("Board") is the promulgating agency.

The Board 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, to obtain a license from the Commissioner of VDH. Every entity renting, selling, or bartering a secondhand item of bedding and upholstered furniture must sanitize the item before it is rented, sold, or otherwise disposed of in a commercial manner, and must obtain a permit to do so from the Commissioner. Section 32.1-218 of the Code of Virginia authorizes the Board 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 is 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 states' bedding and upholstered furniture regulatory programs requested Virginia address standards for reclaimed and reprocessed filling materials. 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 recycled materials, such as polyester generated from recycled plastic and post-consumer reclaimed down, to be processed with methods resulting in 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 clearer and more transparent to the regulated public.

HB 891 of the 2018 General Assembly Session would have eliminated the licensing and fee requirements for manufacturers, importers, and reupholsterers of bedding and upholstered furniture. The bill was not reported from committee, but the chairman of the House Health, Welfare and Institutions Committee sent VDH a letter in January of 2018 requesting that VDH 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 and carry through to the final amendments.

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 amendment revises defined terms, adds new sections to expand on or clarify existing standards or practices, updates cross-references to sections of the Code of Virginia, corrects sentence structure, grammar, typographical errors, and aligns formatting with the VRRM. Substantive changes include:

- Chapter title amended from "Regulations for Bedding and Upholstered Furniture Inspection Program" to "Regulations for Bedding and Upholstered Furniture."
- Definitions revised to provide clarity to key or frequently used terms throughout the regulations; amended to align with defined terms found in Title 32.1 of the *Code of Virginia*.
- Update and clarify license, permit, and uniform registry number requirements and application; added new section on application process and change reporting.
- Added newly revised application forms.

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 greater 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 there is 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 recycled 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.

Amendments to sanitizing requirements, most notably the addition of steam as a sanitizing method, are designed to provide additional options 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). There were no disadvantages to the public or the Commonwealth identified.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, 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

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's 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.

There were no comments received on Virginia Regulatory Town Hall or directly to the agency during the public comment period.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
CHAPTER TITLE		This change does not impose a new requirement; the proposed change amends the chapter's title.	None.	<p>Change: Title changed to "Regulations for Bedding and Upholstered Furniture."</p> <p>Intent: Clarify regulatory program's purpose.</p> <p>Rationale: Grammatical correction of title.</p> <p>Impact: None.</p>
12VAC5-125-10		This change does not impose a new requirement. Definitions are added for the following: "Board" "Department" "Antiques"	None.	<p>Change: Add definitions for "Board" and "Department" as referenced in the Code of Virginia; strike and correct relative pronouns, "that" and "who"; amend definitions for "Importer" and "Secondhand" for clarity. Update "Reclaimed and Reprocessed" to "Recycled", as the new term no longer conflicts with other states' laws. This last edit was done throughout the regulation. Amend definitions to unstrike "Antiques", a term removed during the proposed stage.</p> <p>Intent: To align defined terms used in the Regulation with the § 32.1 of the <i>Code of Virginia and</i> to add clarity to codified exemptions(HB 2173 of the 2023 General Assembly Session).</p> <p>Rationale: When defined in statute, regulations should use statutory definitions of terms to</p>

				<p>avoid confusion. The relative pronoun changes are based on regulatory language standards.</p> <p>Impact: Improved understanding and application of the regulations.</p>
<p>12VAC5-125-40</p>		<p>This change reinserts antiques as an article exempt from regulation.</p>	<p>None.</p>	<p>Change: Grammatical corrections, an update of statutory citations, removal of term “valid”, and unstriking item 2 regarding the exemption of antiques.</p> <p>Intent: Update and clarify exemptions to regulations. The intent is also to maintain an exemption from the regulations for bedding and upholstered furniture over 75 years old.</p> <p>Rationale: Changes will improve grammar and accuracy of wording. During the Periodic Review, the Office of the Attorney General indicated that the Board did not have the statutory authority to exempt antiques from the Regulations. VDH sought, via the legislative proposal process, an amendment to the Code which would grant such authority. HB2173 and SB1016 in the 2023 General Assembly Session codify the antique exemption. As of the writing of this document, the two identical bills have been enrolled and are expected to go into effect July 1, 2023.</p> <p>Impact: Improved understanding and application of the</p>

				regulations. Antique furniture dealers will not need to comply with the Regulations, preventing a significant administrative and cost burden on the industry and agency.
12VAC5-125-50		This change does not impose a new requirement; restructured section for clarification, minor grammatical and terminology corrections.	None.	<p>Change: Restructure of section for clarification, separating application procedures from licensing requirements; minor terminology change.</p> <p>Intent: Restructure section to provide clarity to licensing/permitting requirements.</p> <p>Rationale: Changes will improve grammar and accuracy of wording.</p> <p>Impact: Improved understanding and application of the regulations.</p>
	125-55	This change does not impose a new requirement; provisions from Section 50 were moved to this proposed section for clarity.	None.	<p>Change: Add section to clarify the application procedure, termination of permits/licenses, and when to report changes.</p> <p>Intent: Simplify application submission process, provide clarification to regulants' obligation to report changes to the Department.</p> <p>Rationale: Existing regulation combines general provisions for licensure, procedures to obtain a license/permit, and license/permit maintenance. Creating a new section combines related information in one location.</p> <p>Impact: Improved understanding and</p>

				application of the regulations.
12VAC5-125-60		The change does not impose a new requirement, only clarifies existing provisions and creates more realistic timelines for the agency and the permit holder for administrative procedures.	None.	<p>Change: Revises section to clarify timelines for the suspension and revocation of a license/permit and process to conduct an informal fact finding conference; “license” or “permit” as necessary to improve understanding of applicability of regulations; revises the number of days the department has to conduct an informal fact finding conference from three working days to seven, and the number of days a former permit holder has to request an IFFC from 10 to 30.</p> <p>Intent: To provide clarity to informal fact-finding procedures and timelines.</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.</p> <p>Impact: Regulated entities and VDH staff will have increased clarity regarding the administrative processes.</p>
12VAC5-125-80		The change does not impose a new requirement, the previous regulatory text did not comply with VRRM styling requirements.	None.	<p>Change: Section amended to comply with regulatory styling requirements, to improve grammar, and adds the term “license” and “permit holder” to improve understanding of applicability of regulations (clarifies when standards apply to permittees or licensees); amends</p>

				<p>section B to correct cross reference.</p> <p>Intent: Clarifies when standards apply to permit or license holders; improved clarity.</p> <p>Rationale: Clarify the context of these requirements.</p> <p>Impact: Improved understanding and application of the regulations.</p>
12VAC5-125-90		The proposed change will not impose new requirements, but will create more flexibility for the regulated industry.	None.	<p>Change: Section amended to comply with VRRM Style requirements, includes grammatical edits deemed necessary to improve understanding of applicability of regulations, adds black as an ink option for recycled material law labels, and strikes “manufacturer” and inserts “retailer.”</p> <p>Intent: To update and clarify standards for law labels.</p> <p>Rationale: Clarifies the context of these requirements and corrects a long-standing error in the Sanitizer law label.</p> <p>Impact: Improved understanding and application of the regulations.</p>
12VAC5-125-100		The change will not impose new requirements, but restricts a long-standing provision’s applicability to permit holders as defined by the chapter.	None.	<p>Change: Section amended to comply with VRRM Style requirements, includes grammatical edits, substitutes “sanitation” for “sanitization”, and adds language restricting the scope of an existing provision.</p>

				<p>Intent: Update and clarify requirements.</p> <p>Rationale: Clarifies the context of these requirements, corrects a long-standing terminology error, and ensures a provision will not be incorrectly applied to new furniture stores.</p> <p>Impact: Improved understanding and application of the Regulations.</p>
12VAC5-125-145		The change does not impose a new requirement to the agency or regulants; amended language provides clarification on regarding business vs. calendar days.	None.	<p>Change: Section amended to provide clarity regarding business vs. calendar days when providing a variance request decision.</p> <p>Intent: Update and clarify variance requirements and timelines for submission and processing.</p> <p>Rationale: Clarifies the context of these requirements.</p> <p>Impact: Improved understanding and application of the regulations.</p>
	12VAC-125 (FORMS)	The change does not impose a new requirement as regulants are required to submit an application for licensure or permit. This change publishes, as required, reporting forms.	None.	<p>Change: To provide a standardized application form for potential license and permit holders.</p> <p>Intent: To provide a standard application form to potential applicants.</p> <p>Rationale: A standard application form simplifies the application process for potential applicants and ensures vital information is captured for staff to process applications.</p>

				Impact: Improved application processing.
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Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
CHAPTER TITLE		Regulations for Bedding and Upholstered Furniture Inspection Program	<p>Change: Title changed to "Regulations for Bedding and Upholstered Furniture."</p> <p>Intent: Clarify regulatory program's purpose.</p> <p>Rationale: Grammatical correction of title.</p> <p>Impact: None.</p>
12VAC5-125-10		<p><u>Definitions. (Deletions)</u> "As is" "Board" "Commissioner" "Department" "Designee or designated officer or agent" "Inspector" "Soiled or torn" "Used" "Wholesaler" "Filling material definitions will be in accordance with definitions published in the 2004 Edition of the International Sleep Products Association Handbook."</p> <p><u>Definitions. (Amendments)</u> "Bedding" "Bedding Program" "Distributor/wholesaler" "Filling material" "Importer"</p>	<p>Change: Defined terms were deleted, amended, or added as outlined.</p> <p>Intent: To provide clarity to terms, remove obsolete terminology, improve understanding of terms and regulations.</p> <p>Rationale: The proposed changes will remove obscure terminology, align definitions with industry standards and statutory definitions. Additional edits were necessary to comply with the VRRM.</p> <p>Impact: Streamlined regulation with no erroneous or unnecessary references.</p>

		<p>"Law label" "License" "Licensing state" "Manufacturer" "New" "Permit" "Person" "Renovator" "Retailer" "Reupholsterer" "Secondhand" "Sell" "Shoddy" "Shoddy pad" "Supply dealer" "Uniform registry number" "Upholstered furniture"</p> <p>Definitions. (Additions) "Board" "Department"</p>	
12VAC5-125-20		<p>Administration. Describes rights of the Board to enact the regulations.</p>	<p>Change: Repeal the section.</p> <p>Intent: To remove unnecessary language from 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: Removal of the language streamlines the chapter, but does not affect any of the described authorities.</p>
12VAC5-125-30		<p>Powers and procedures of chapter not exclusive. The Board may pursue enforcement options not listed in the chapter.</p>	<p>Change: Changes title to "Compliance" with the "Virginia Administrative Process Act" and outlines the chapter will be enforced in accordance with this act.</p> <p>Intent: Provide improved understanding of enforcement provisions in relation to regulatory text.</p> <p>Rationale: All enforcement procedures must be compliant with the Administrative Process Act.</p> <p>Impact:None.</p>
12VAC5-125-40		<p>Exemptions. Establishes list of exemptions from chapter.</p>	<p>Change: Includes reference to consignment in exemption for an individual selling personal</p>

			<p>household goods. Adds two exemption types relocated from section 100. In addition, the section was restructured for clarity, minor grammatical edits. In addition, statutory citations were updated and term “valid” was removed.</p> <p>Intent: Provide improved understanding, clarity, and application of regulations as it relates to exemptions..</p> <p>Rationale: 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: Requirements for consignment will be more transparent; no change in regulation results from the amendment; improved understanding of an application of the regulations.</p>
<p>12VAC5-125-50</p>		<p>Licenses, permits, and registration numbers.</p> <p>Establishes the 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/Uniform Registry Number they import or distribute from).</p>	<p>Change: Revises section title to Licenses, permits, and uniform registry numbers. Reorganizes and reorders subsections. Changes terminology for Reupholsterer and Renovator authorizations from license to permit. 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). In addition, the section was restructured for clarity, minor grammatical edits.</p> <p>Intent: Update and clarify requirements; restructure section for</p>

			<p>licensing/permitting requirements for ease of understanding.</p> <p>Rationale: The terminology change of license to permit was requested as a result of HB891 of the 2018 General Assembly Session; the agency agrees permit better suits the operations of a facility; license carries the connotation of an authorized entity, rather than an operating facility. Amendments will ensure this provision is more clearly stated. Uniform registry number assignment and use varies between licensee types, which is existing national practice, and this should be clearly stated in the chapter. 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). In addition, edits will improve understanding of an application of the regulations.</p>
	12VAC5-125-55	None.	<p>Change: Add section to clarify the application procedure, termination of permits/licenses, and when to report changes.</p> <p>Intent: Simplify application submission process, provide clarification to regulants' regarding reporting changes to the Department.</p> <p>Rationale: Existing regulation combines general provisions for</p>

			<p>licensure, procedures to obtain a license/permit, and license/permit maintenance. Creating a new section combines related information in one location.</p> <p>Impact: Improved understanding and application of the regulations.</p>
12VAC5-125-60		<p>Revocation of a license or permit.</p> <p>Outlines revocation of licenses and permits.</p>	<p>Change: Revises section title to Enforcement, Notices, Informal Conferences (second and third term capitalized because they are proper nouns); content updates with modern language on revocations, suspensions, and informal conferences.</p> <p>Intent: To provide clarity to informal fact-finding procedures and timelines.</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: Improved understanding and application of the regulations.</p>
12VAC5-125-70		<p>Application after revocation. Describes permit or license application after revocation</p>	<p>Repealed</p> <p>Change: Content addressed in section 60.</p> <p>Intent: Update and clarify requirements.</p> <p>Rationale: Content more applicable in section 60.</p> <p>Impact: Improved understanding and application of the regulations.</p>
12VAC5-125-80		<p>Inspections.</p> <p>Outlines six types of complaints that may result in an inspection. Late or nonrenewal of permit may result in an inspection. Permit holders must self report any infestations at their place of business to the Bedding Program.</p>	<p>Change: Revises and restructures the entire section. Complaint types will be consolidated to one item. Inspection types will be organized in a 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. In addition, adds the</p>

			<p>term “license” or “permit holder” as necessary to designate which license type is applicable.</p> <p>Intent: Update and clarify 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>
<p>12VAC5-125-90 Row 1 of 2 for this section TEXT</p>		<p>Law labels conforming to the Virginia law.</p> <p>Description of general provisions for law labels, when they must be attached; includes both new and secondhand law labels.</p>	<p>Change: Section amended to comply with VRRM style requirements and grammatical edits. Changes section title to Law label requirements. 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>Intent: Update and clarify requirements for law labels.</p> <p>Rationale: Reorganization of content and renaming of sections was necessary to update and modernize language, and to improve clarity and sentence structure. Bold font is not a clearly</p>

			<p>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. 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 and 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. These standards pave the way for national acceptance of reclaimed and reprocessed materials in bedding and upholstered furniture products. Green-font labels will draw</p>
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			<p>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 Row 2 of 2 for this section 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>Change: Removes all seven existing law label template tables (referred to as “Attachments” in text, and all footnotes associated with them.</p> <p>Adds three new tables compiling templates for law labels: Table 1- New (not secondhand) bedding and upholstered furniture labels 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. Table 3- Secondhand bedding and upholstered furniture labels. 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>Intent: Update and clarify requirements.</p> <p>Rationale: The existing seven tables are difficult for regulated industries 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</p>

			<p>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). 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>12VAC55-125-100</p>		<p>Sanitization of Used Bedding and Upholstered Furniture. 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>	<p>Change: Section amended to comply with VRRM style requirements and grammatical edits. Changes section title to Secondhand bedding and upholstered furniture. Adds language to clarify when reupholstered and renovated items must be sanitized. Removes brand names, outlines general process by which a person may apply for approval of sanitizing product (specific brand name or specific</p>

			<p>methodology), and outlines two categories of approved methods: isopropyl alcohol-based spray, and thermal (heat or steam). Relocates requirement for delivery vehicle sanitization from section 110, adds requirement for vehicle sanitizing events to be logged, and removes date 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>Intent: Update and clarify requirements.</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 to 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</p>
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		<p>inspectors to crosscheck 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 the exemptions section.</p> <p>Impact: All item relocations will result in a regulation more easily understood by the public. Creation of a pathway for new sanitizing product approvals in policy will allow flexibility for industry without requiring a regulatory amendment (when brand names were listed in regulation). New sanitizing methods of heat and steam will allow flexibility while still being protective of public health and safety.</p>
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<p>12VAC5-125-110</p>		<p>Sterilization of new animal hair, feathers and down. Animal-derived filling materials must be sterilized before use.</p>	<p>Change: Revises existing provision for grammar. Adds subsection on approved processes for sterilization; including pressurized steam, streaming steam, heat, and washing.</p> <p>Intent: Update and clarify requirements.</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>
<p>12VAC5-125-120</p>		<p>Separation and storage of new and sanitized items.</p> <ol style="list-style-type: none"> 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>Repealed</p> <p>Change: Items 1 and 2 will move to section 100.</p> <p>Intent: Clarify requirements by relocating standards for ease of readability.</p>

			<p>Rationale: (Items 1-2) All sanitization provisions should be in one section of the regulation for ease of access.</p> <p>Impact: Improved compliance with sanitation standards due to increased clarity and organization of regulations.</p>
<p>12VAC5-125-130</p>		<p>Violation of regulations. Establishes:</p> <ol style="list-style-type: none"> 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>Change: Provides grammar and word choice updates for items 1- 3. Removes reference to items 4-6.</p> <p>Intent: Update and clarify requirements.</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>
<p>12VAC5-125-140</p>		<p>Enforcement of regulation.</p> <p>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>Repealed</p> <p>Change: Removes language unnecessary to the regulation.</p> <p>Intent: Update and clarify requirements.</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</p>

			<p>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>
<p>12VAC5-125-145</p>		<p>None.</p>	<p>Change: Section amended to provide clarity regarding business vs. calendar days when providing a variance request decision.</p> <p>Intent: Update and clarify variance requirements and timelines for submission and processing.</p> <p>Rationale: Clarify the context of these requirements.</p> <p>Impact: Improved understanding and application of the regulations.</p>
<p>12VAC5-180</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>Change: Importers’ and Distributors’ fees will be changed to a sliding scale structure. Small Renovators and Reupholsterers (self-employed with no employees) will be excluded from the fee. Sterilizers will be charged a \$60 fee.</p> <p>Intent: The more manufacturers or URNS an entity imports or distributes from, the higher fee they will pay.</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 via a letter from the Chair of the House Health, Welfare and Institutions Committee in 2018.</p> <p>Sterilizers were traditionally charged the Sanitizer permit fee, as these items have been grouped together in Code and Regulation, but there</p>

			<p>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 maintain revenue that is budget neutral from Importer and Distributor licenses (see Economic Impact Form for more detailed context). Permit fees from Renovator and Reupholsterer permits are a negligible 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>
	<p>12VAC-125 (FORMS)</p>	<p>None</p>	<p>Change: To provide a standardized application form for potential license and permit holders.</p> <p>Intent: To provide a standard application form to potential applicants.</p> <p>Rationale: A standard application form simplifies the application process for potential applicants and ensures vital information is captured for staff to process applications.</p> <p>Impact: Improved application processing.</p>