



Final Regulation Agency Background Document

Agency name	Department of Health
Virginia Administrative Code (VAC) citation	12 VAC 5 - 125
Regulation title	Regulations for Bedding and Upholstered Furniture Inspection Program
Action title	Adoption
Date this document prepared	March 14, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The Regulations governing Bedding and Upholstered Furniture Inspection, in response to Act of Assembly 1003 (HB 2810, 2003), expands bedding and upholstered furniture definitions, outlines causes for inspections, expands exemptions to the bedding law in the Code of Virginia, and outlines penalties for violations.

Statement of final agency action

Please 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.

On February 2, 2007, the State Board of Health adopted the *Regulations for Bedding and Upholstered Furniture Inspection Program*. The regulations will become effective on June 1, 2007 or 30 days after publication in the Virginia Register, whichever occurs last.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The bill noted above authorizes these regulations. This action would implement the provisions of §§32.1-212 through 32.1-226 and 59.1-200 of the Code of Virginia, relating to the regulation of bedding and upholstered furniture.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the regulations is to ensure that only safe and healthy Bedding and Upholstered Furniture products are being sold in the Commonwealth, that uniformity with other state bedding programs is maintained, and that the Code of Virginia be enforced.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The proposed regulations are a result of actions of the 2003 session of the General Assembly, as specified in House Bill 2810, requiring that the Department promulgate the Bedding and Upholstered Furniture laws into regulations. No regulations previously existed. Thus, all sections of Chapter 125 of 12VAC5 are new regulations.

The regulations adhere closely to the requirements of the Code of Virginia. The Code covers basic definitions, use of new and used filling materials, sale and disposal of bedding or upholstered goods, permitting and licensing requirements and fees, tagging of goods with appropriate law labels (tags), offenses relating to tags, violations of the Code, prohibited practices, exemptions to the Code and administrative enforcement of the Code. The substantive regulatory additions to the requirements contained in the Code are:

1. Expansion of definitions as provided by other state bedding and upholstered furniture inspection programs.
2. Inspection conditions. A key element of HB 2810 was to prohibit inspections of licensed vendors to only when a complaint is made to the Commissioner of Health. Given this limitation, these regulations identify those conditions initiating an inspection. These conditions include, but are not limited to, receipt of a complaint against a licensed manufacturer or vendor, inspections of vendors not possessing a permit or license, inspections resulting from observations made by a bedding inspector in the course of an inspection of an unlicensed vendor, late receipt of a renewal fee, and application for a license or permit.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

The regulatory action poses no disadvantages to the public or the Commonwealth. The advantages for the action are that the regulations, when adopted, will provide assurance that used bedding is cleaned and sanitized before being resold or rented. The regulations will also limit government intrusion into upholstered furniture business in the Commonwealth by restricting inspections to only complaint investigations or inspections of those entities that are not properly licensed.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change

No changes made.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response

No comments received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10	10		Added definition of “Antique” for clarity
10	10		Revised definition of “Inspector” for clarity and accuracy
20	20		Revised wording for consistency and clarity.
	40		Added a section specifying entities that are exempt from the regulations.
40	50		Former section 40. Added language to detail the permitting and licensing processes.
	60		Details license and permit revocation procedure
	70		Details process for applying for a permit or license after a revocation.
50	80		Former section 50. Details inspections and procedures.
60	90		Former section 60 regarding Law labels.
70			Former section 70 deleted and replaced by language in new section 50.
80	100		Former section 80 – minor revisions for clarity and accuracy.
90	110		Former section 90
100	120		Former section 100. Revised language to clarify separation distances. Standard remains the same.
110	130		Former section 110.
	140		Added section 140 which describes process of enforcing the regulations
	150		Added section 150 which describes process to request a hearing.
	160		Added section 160 which describes hearing rights
	170		Added section 170 which details penalties, injunctions and civil penalties consistent with the Code of Virginia
120	180		Former section 120 regarding fees.

These regulations are basically the same as the existing Emergency Regulations from the standpoint of standards. However much as been added to them to inform the public of procedural requirements of the regulations, i.e., how to apply for a permit or license, hearing requirements, etc. Also, we added a definition of “antique” to help clarify parts of the regulations.

Regulatory flexibility analysis

Please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

This action is mandated by an act of the 2003 Session of the General Assembly, signed into law by the Governor. No appropriate alternative exists.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No impact on family or family stability.