

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

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2012 AUG 31 PM 3:01

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #3

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY: W. Va. Code Section 47-1A-15

AMENDMENT TO AN EXISTING RULE: YES NO

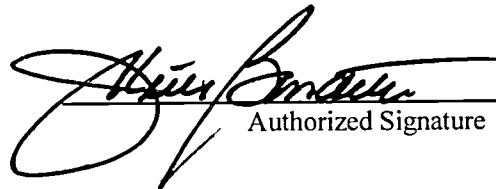
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12

TITLE OF RULE BEING AMENDED: Bedding and Upholstered Furniture

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 31, 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Labor
State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305
304.558.7890 x 111

LEGISLATIVE RULE TITLE: Bedding and Upholstered Furniture

1. Authorizing statute(s) citation W Va Code Section 47-1A-15

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 30, 2012

b. What other notice, including advertising, did you give of the hearing?
Notice of the proposed rule and comment period was put on the Division of Labor's website.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 30, 2012

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received x

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 31, 2012

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

David W. Mullins, Commissioner

West Virginia Division of Labor

State Capitol Complex

Building 6, Room B-749

Charleston, WV 25305

david.w.mullins@wv.gov

304.558.7890 x 111 (phone) 304.558.2273 (fax)

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

John R. Junkins, Deputy Commissioner

West Virginia Division of Labor

same as above

john.r.junkins@wv.gov

304.558.7890 x 146 (phone) 304.558.2273 (fax)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

WEST VIRGINIA DIVISION OF LABOR

749-B Building 6 , Capitol Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-2273

www.wvlabor.org

EARL RAY TOMBLIN
Governor



DAVID W. MULLINS
Commissioner

Statement of Facts and Circumstances

and

Summary of Proposed Amendments to Title 42, Series 12

Bedding and Upholstered Furniture

The West Virginia Division of Labor proposes the following amendments and revisions to Title 42, Series 12, of the West Virginia Code of State Regulations:

- incorporating by reference the International Association of Bedding and Furniture Law Officials "Classification of Filling Materials;"
- clarifying current administrative practices for the registration of manufacturers, importers, renovators and upholsterers, and for the issuance of permits for sterilizers;
- requiring that fees be paid in United States currency and that any check drawn on a bank not chartered or licensed by a state in the United States or not chartered by the Office of the Comptroller of the Currency be returned;
- adopting examples of specific tags or labels required to be affixed to bedding and upholstered furniture; and
- other technical changes are also proposed to eliminate redundant provisions.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Bedding and Upholstered Furniture

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Division of Labor

Address: State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305

Phone Number: 304.558.7890 x 111 Email: david.w.mullins@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed amendments and revisions to 42 CSR 12 will have no impact on the costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Bedding and Upholstered Furniture

Rule Title:

Bedding and Upholstered Furniture

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

Date: August 31, 2012

Signature of Agency Head or Authorized Representative



TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR

SERIES 12
BEDDING AND UPHOLSTERED FURNITURE

FILED
2012 AUG 31 PM 3:01
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§42-12-1. General.

1.1. Scope. - This rule is for the enforcement of all matters concerning the regulation of bedding and upholstered furniture pursuant to W. Va. Code § 47-1A-1, *et seq.*

1.2. Authority. -- W. Va. Code §47-1A-15.

1.3. Filing Date. -

1.4. Effective Date. --

1.5. Repeal of former rule. -- This rule repeals and replaces 42 CSR 12, “Bedding and Upholstered Furniture” filed December 31, 1982 and effective December 31, 1982.

§42-9-2. Application and Enforcement.

2.1. Application. This rule applies to all persons governed or otherwise within the purview of the Regulation and Control of Bedding and Upholstery Businesses Act, W. Va. Code §47-1A -1, *et seq.*

2.2. Enforcement. The enforcement of this rule is vested with the West Virginia Division of Labor.

§42-9-3. Definitions.

3.1. The “Act” or “the law,” for purposes of this rule, means the Regulation and Control of Bedding and Upholstery Businesses Act, W. Va. Code §47-1A -1, *et seq.*

3.2. “Antique” means a product that is at least 75 years old.

3.3. “As is” means the condition of an intact, complete secondhand article of bedding that has not been remade or renovated in any way.

3.4. “Bedding” or “article of bedding” means any article intended for human use for sleeping, resting or reclining purposes, such as quilted pads, mattress pads, hammock pads,

mattresses, comforters, quilts, sleeping bags, box springs, studio couches, pillows, cushions, etc., and includes the filling material used in their manufacture.

3.5. “Commissioner” means the Commissioner of the Division of Labor or his or her designee.

3.6. “Division” means the West Virginia Division of Labor.

3.7. “Fill material” or “filling material” means any material used in the manufacture or renovation of articles of bedding or upholstered furniture, including cotton, wool, kapok, feathers, down, hair or any other material or combination of materials.

3.8. “IABFLO” refers to the International Association of Bedding and Furniture Law Officials, <http://abflo.info/index.htm>.

3.9. “Importer” means a person that receives bedding, upholstered furniture, or filling material from any country other than the United States.

3.10. “Manufacturer” means a person that makes or produces articles of bedding, upholstered furniture, or filling material, using either new or secondhand materials.

3.11. “Person” means an individual, a partnership, an association, a business, an auctioneer, a trust, a corporation, or any other entity engaged in the manufacturing, importing, selling, renovating, upholstering or sterilizing any article of bedding, upholstered furniture or filling material.

3.12. “Registration number” or “registry number” means the unique number assigned by the Division to an applicant for a registration certificate, or a uniform registry number assigned to an applicant by another State.

3.13. “Renovator” means a person who repairs, remakes, rebuilds, recovers, restores, renovates or renews any article of bedding or upholstered furniture.

3.14. “Retailer,” “seller,” “supplier,” “distributor” or “vendor” means a person who sells any article of bedding, upholstered furniture or filling material.

3.15. “Sell” means to offer or expose for sale, barter, trade, deliver, give away, rent, consign, lease, possess with an intent to sell, or dispose of in any commercial manner.

3.16. “Sterilizer” means a person who sterilizes articles of bedding, upholstered furniture or filling material.

3.17. “Tag,” “label,” or “law label” means the tag or label required by W. Va. Code §47-1A-11 to be affixed to articles of bedding or upholstered furniture.

3.18. “Uniform Registry Number System” means the system accepted by all states in the United States that allows the use of one state’s registration number for use on any other state’s law labels or tags.

3.19. “Upholstered furniture” means any article of furniture intended for human use for sitting, resting or reclining that is wholly or partially stuffed or filled with filling material and includes outdoor furniture pads.

3.20. “Upholsterer” means a person who manufactures upholstered furniture.

§42-12-4. Adoption of Standardized Classification of Filling Materials.

IABFLO’s “Classification of Filling Materials” is adopted and incorporated by reference herein.

§42-12-5. Registration Certificate Required; Validity.

5.1. Before manufacturing, importing, renovating, or upholstering any article of bedding, upholstered furniture or filling material for shipment into or sale or rental in this State, a manufacturer, importer, renovator or upholsterer shall submit a properly completed application for a registration certificate to the Commissioner on a form provided by the Division.

5.2. A registration certificate shall expire annually on June 30.

5.3. A registration certificate shall be valid for the business location and name as stated on the certificate, and shall not be valid if transferred or assigned to any other business location or name.

§42-12-6. Initial and Renewal Application for a Registration Certificate; Fees.

6.1. A manufacturer, importer, renovator or upholsterer shall submit a separate application for a registration certificate for each business location or name.

6.2. An applicant for an initial or renewal manufacturer or importer registration certificate shall include a \$50.00 fee for each business location or name.

6.3. An applicant for an initial or renewal renovator or upholsterer registration certificate shall include a \$10.00 fee for each business location or name.

6.4. An applicant for an initial or renewal registration certificate shall pay the required application fee in United States currency.

6.4.1. The preferred method for payment of the application fee is by credit card.

6.4.2. If the applicant submits the fee by check, the check shall be drawn on a bank that has a banking charter or license issued by a state in the United States or is chartered by the Office of the Comptroller of the Currency.

6.4.3. If the applicant submits the fee by check drawn on a bank not chartered or licensed by a state in the United States or not chartered by the Office of the Comptroller of the Currency, the Commissioner shall refuse the check and return it to the applicant.

6.5. An applicant for an initial registration certification shall include 2 original tags or labels intended for use with an article of bedding, upholstered furniture or filling material.

6.5.1. An applicant may submit a template for approval by the Commissioner prior to having the tags or labels printed.

6.5.2. Before issuing a registration certificate, the Commissioner shall approve the applicant's tag or label for use.

6.6. The Division shall mail annual renewal applications to current certificate holders at their last known registered address no later than April 15.

§42-12-7. Sterilizer Permit Required; Posting of the Permit.

7.1. Before sterilizing any article of bedding, upholstered furniture or filling material for shipment into, or for sale or rental in this State, a sterilizer shall submit a properly completed application for a sterilizer's permit to the Commissioner on a form provided by the Division.

7.2. A sterilizer permit shall expire annually on June 30.

7.3. A sterilizer permit shall be valid for the business location and name as stated on the permit, and shall not be valid if transferred or assigned to any other business location or name.

7.4. The sterilizer shall ensure that the sterilizer permit is conspicuously posted near the sterilizing equipment.

§42-12-8. Initial and Renewal Application for a Sterilizer Permit; Fees.

8.1. A sterilizer shall submit a separate application for a sterilizer permit for each business location or name.

8.2. An applicant for an initial sterilizer permit shall include a \$25.00 fee for each business location or name.

8.3. An applicant for a renewal sterilizer permit shall include a \$10.00 fee for each business

location or name.

8.4. An applicant shall pay the required application fee in United States currency.

8.4.1. The preferred method for payment of the application fee is by credit card.

8.4.2. If the applicant submits the fee by check, the check shall be drawn on a bank that has a banking charter or license issued by a state in the United States or is chartered by the Office of the Comptroller of the Currency.

8.4.3. If the applicant submits the fee by check drawn on a bank not chartered or licensed by a state in the United States or not chartered by the Office of the Comptroller of the Currency, the Commissioner shall refuse the check and return it to the applicant.

8.5. An applicant for an initial or renewal sterilizer permit shall include a complete description of its sterilization process and procedures, including identification of the types of items to be sterilized and the names of the chemicals to be used.

8.6. An applicant for a renewal sterilizer permit shall include a description of any changes to its previously approved sterilization process.

8.7. Before issuing a sterilizer permit, the Commissioner shall approve the proposed sterilization process. If the Commissioner does not approve the sterilization process, he or she shall provide the applicant with a written explanation.

8.8. The Division shall mail annual renewal applications to current permit holders at their last known address no later than April 15.

§42-12-9. Issuance of a Registration or Permit Number.

9.1. Upon receipt of a properly completed application for a registration certificate or sterilizer permit, the Division shall assign a registration or permit number to the applicant, or shall use the applicant's uniform registration number if one is available.

9.2. The Division shall assign or use a unique registration or sterilizer number for each business name or location.

9.3. A manufacturer, importer, renovator, upholsterer or sterilizer shall use the registration or permit number assigned by the Division on all labels or tags required by the Act or this rule.

§42-12-10. Tags or Labels Required; Information Required.

10.1. "All New Material" white tag or label.

10.1.1. A manufacturer or importer shall ensure that a white tag or label is properly attached to an article of bedding, upholstered furniture or filling material that contains all new material, and that the white tag or label conforms to the provisions of W. Va. Code §§47-1A-11 and -12.

10.1.2. When the bedding, upholstered furniture or filling material does not require sterilizing, the “All New Material” white tag or label shall conform to the sample tag in Appendix A.

10.1.3. When the bedding, upholstered furniture or filling material does require sterilizing, the “All New Material” white tag or label shall conform to the sample tag in Appendix B.

10.2. “Secondhand material” yellow tag or label.

10.2.1. A renovator, upholsterer or sterilizer shall ensure that a yellow tag or label is properly attached to an article of bedding, upholstered furniture or filling material that contains secondhand material, and that the yellow tag or label conforms to the provisions of W. Va. Code §§47-1A-11 and -12.

10.2.2. When the second-hand bedding or upholstered furniture has been renovated or otherwise remade and has been sterilized, the “Renovated or Remade - Sterilized” light yellow tag or label shall conform to the sample tag in Appendix C.

10.2.3. When the second-hand bedding or upholstered furniture has been renovated or otherwise remade for a specific owner and not for sale to the general public, the “Renovated or Remade for Specific Owner - Not To Be Sold” light yellow tag or label shall conform to the sample tag in Appendix D.

10.2.4. When the second-hand bedding or upholstered furniture is intact, complete, has not been renovated or otherwise remade from its immediate prior owner, and has not been sterilized, the “Secondhand - Contents Unknown - Not Sterilized” dark yellow tag or label shall conform to the sample tag in Appendix E.

10.2.5. When the second-hand bedding or upholstered furniture is intact, complete, has not been renovated or otherwise remade from its immediate prior owner, and has been sterilized, the “Secondhand - Contents Unknown - Sterilized” dark yellow tag or label shall conform to the sample tag in Appendix F.

10.3. “Declared Unclean” red tag or label.

10.3.1. If the Commissioner determines that an article of bedding, upholstered furniture, or filling material has come into contact with, or could have come into contact with, an

individual with an infectious or contagious disease, he or she shall cause a red tag or label to be affixed to the exposed items.

10.3.2. When an article of bedding, upholstered furniture or filling material has been declared unclean, the “Declared Unclean” red tag or label shall conform to the sample tag in Appendix G.

10.4. “Article or Material Placed Off-Sale” blue tag or label.

10.4.1. If the Commissioner determines that an article of bedding, upholstered furniture, or filling material is not properly tagged or labeled as required by W. Va. Code §§47-1A-11 and -12, or that the tag or label contains inaccurate or misleading terms or information, he or she shall cause a blue tag or label to be affixed to the improperly or inaccurately tagged or labeled items.

10.4.2. When an article of bedding, upholstered furniture or filling material has been improperly or inaccurately tagged or labeled, the “Article or Material Placed Off-sale” blue tag or label shall conform to the sample tag in Appendix H.

BEDDING AND UPHOLSTERY TAG / LABEL

NEW MATERIAL - NOT STERILIZED

space for stitching	
UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER	
ALL NEW MATERIAL CONSISTING OF	
REGISTRATION # WV	
CERTIFICATION IS MADE BY THE MANUFACTURER THAT THE MATERIALS IN THIS ARTICLE ARE DESCRIBED IN ACCORDANCE WITH WEST VIRGINIA LAW	
Name and address of Manufacturer, Importer, Distributor or Vendor.	
DATE OF DELIVERY	_____ ←
FINISHED SIZE AND/ OR WEIGHT	_____ ←
FEDERAL RN#	_____ ←
MADE IN	_____ ←

OTHER
INFORMATION
(OPTIONAL)

BEDDING AND UPHOLSTERY TAG / LABEL

NEW MATERIAL - STERILIZED

space for stitching	
UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER	
ALL NEW MATERIAL CONSISTING OF	
CONTENTS STERILIZED	
PERMIT # WV	
REGISTRATION # WV	
CERTIFICATION IS MADE BY THE MANUFACTURER THAT THE MATERIALS IN THIS ARTICLE ARE DESCRIBED IN ACCORDANCE WITH WEST VIRGINIA LAW	
Name and address of Manufacturer, Importer, Distributor or Vendor.	
DATE OF DELIVERY	_____
FINISHED SIZE AND/ OR WEIGHT	_____
FEDERAL RN#	_____
MADE IN	_____

←
←
←
←
←
OTHER
INFORMATION
(OPTIONAL)

BEDDING AND UPHOLSTERY TAG / LABEL

RENOVATED OR REMADE - STERILIZED

space for stitching
UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER
THIS ARTICLE HAS BEEN RENOVATED BY ADDING THE FOLLOWING MATERIALS (OR)
NO MATERIALS ADDED
PERMIT # WV
REGISTRATION # WV
CERTIFICATION IS MADE THAT THE MATERIALS IN THIS ARTICLE ARE DESCRIBED IN ACCORDANCE WITH WEST VIRGINIA LAW
DATE STERILIZED
NAME AND ADDRESS OF REMAKER OR RENOVATOR

BEDDING AND UPHOLSTRY TAG / LABEL
RENOVATED OR REMADE FOR SPECIFIC OWNER
NOT TO BE SOLD

space for stitching
UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER
THIS ARTICLE HAS BEEN RENOVATED BY ADDING THE FOLLOWING MATERIALS (OR)
NO MATERIALS ADDED
PERMIT # WV
REGISTRATION # WV
CERTIFICATION IS MADE THAT THE MATERIALS IN THIS ARTICLE ARE DESCRIBED IN ACCORDANCE WITH WEST VIRGINIA LAW
NOT TO BE SOLD, THIS ARTICLE BELONGS TO (NAME AND ADDRESS OF OWNER)
DATE STERILIZED
CONTENTS NOT STERILIZED
NAME AND ADDRESS OF REMAKER OR RENOVATOR

Appendix D

BEDDING AND UPHOLSTERY TAG / LABEL
SECOND HAND CONTENTS
CONTENTS UNKNOWN - NOT STERILIZED

STITCH AREA
UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER
SECOND-HAND CONTENTS UNKNOWN - NOT STERILIZED
REGISTRATION # WV
CERTIFICATION IS MADE THAT THE MATERIALS IN THIS ARTICLE ARE DESCRIBED IN ACCORDANCE WITH WEST VIRGINIA LAW
NAME AND ADDRESS OF VENDOR ▼▼▼
SOLD BY

BEDDING AND UPHOLSTRY TAG / LABEL
SECOND HAND CONTENTS
CONTENTS UNKNOWN - NOT STERILIZED

STITCH AREA
UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED EXCEPT BY THE CONSUMER
SECOND-HAND CONTENTS UNKNOWN - STERILIZED
REGISTRATION # WV _____
PERMIT# WV _____
DATE STERLIZED _____
CERTIFICATION IS MADE THAT THE MATERIALS IN THIS ARTICLE ARE DESCRIBED IN ACCORDANCE WITH WEST VIRGINIA LAW
NAME AND ADDRESS OF VENDOR ▼▼▼
SOLD BY

BEDDING AND UPHOLSTERY TAG / LABEL

ARTICLE OR MATERIAL

PLACED OFF - SALE

space for stitching

**UNDER PENALTY OF LAW THIS
TAG NOT TO BE REMOVED**

**THIS ARTICLE OR MATERIAL HAS
BEEN PLACED OFF SALE BY THE
COMMISSIONER OF THE WEST
VIRGINIA
DIVISION OF LABOR
SPECIAL NOTES**

**NAME AND ADRESS OF
LOCATION WHERE PLACED OFF SALE**