

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

Form #4

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CLARENCE M. HALL, JR.
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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 RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR

2012 DEC 21 AM 11:16

SERIES 12
BEDDING AND UPHOLSTERED FURNITURE

COLLEEN C. GIGNA
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. "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.

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

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

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

3.9. "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.

3.10. "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.

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

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

3.13. "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.

3.14. "Sterilizer" means a person who sterilizes articles of bedding, upholstered furniture or filling material.

3.15. "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.

3.16. "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.

3.17. "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, including outdoor furniture pads.

3.18. "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 in this rule.

§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 expires annually on June 30.

5.3. A registration certificate is valid for the business location and name as stated on the certificate, and is not 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. The preferred method for payment of the application fee is by credit card.

6.4.1. 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.

6.4.2. 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 expires annually on June 30.

7.3. A sterilizer permit is valid for the business location and name as stated on the permit, and is not 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. The preferred method for payment of the application fee is by credit card.

8.4.1. 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.

8.4.2. 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 for the disapproval.

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 of this rule.

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 of this rule.

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 of this rule.

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 of this rule.

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 of this rule.

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 of this rule.

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 of this rule.

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 of this rule.

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)

Appendix A

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 UPHOLSTRY 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 ADRESS OF REMAKER OR RENOVATOR

Appendix C

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 UPHOLSTERY TAG / LABEL
SECOND HAND CONTENTS
CONTENTS UNKNOWN - 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
DECLARED UNCLEAN**

<p>space left blank</p>
<p>UNDER PENALTY OF LAW THIS TAG NOT TO BE REMOVED</p>
<p>THIS ARTICLE OR MATERIAL HAS BEEN PLACED OFF SALE BY THE COMMISSIONER OF THE WEST VIRGINIA</p>
<p>SPECIAL NOTES THIS ARTICLE HAS BEEN DECLARED "UNCLEAN"</p>
<p>NAME AND ADDRESS OF LOCATION WHERE PLACED OFF SALE</p>

Appendix G

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 ADDRESS OF
LOCATION WHERE PLACED OFF SALE**

Apendix H