

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 205. Product Safety
Subchapter A. Bedding Rules
Amendment §205.11
Subchapter C. Labeling of Hazardous Substances
Amendment §205.44
Subchapter D. Inhalant Abuse
Amendment §205.57

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §205.11, concerning Bedding fees, §205.44, concerning Labeling of Hazardous Substances fees, and §205.57, concerning Inhalant Abuse fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85 makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

Programs with regulatory authority over the bedding, labeling of hazardous substances, and inhalant abuse were evaluated to determine the level of increase in fees based on the following criteria: The date of the last fee increase for the specific program area; licensee's ability to pay in comparison to average salary of professionals; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

SECTION-BY-SECTION SUMMARY

Amendments to §205.11(b) contain increases in bedding permit fees assessed for a two-year term. Specifically, §205.11(b)(1)(A) increases the mattress manufacturer permit fee for less than 2,000 articles per term by \$20; §205.11(b)(1)(B) increases the mattress manufacturer permit fee for 2,000 to 9,999 articles per term by \$30; §205.11(b)(1)(C) increases the mattress manufacturer permit fee for 10,000 to 19,999 articles per term by \$40; §205.11(b)(1)(D) increases the mattress manufacturer permit fee for 20,000 to 29,999 articles per term by \$60; §205.11(b)(1)(E) increases the mattress manufacturer permit fee for 30,000 to 49,999 articles per term by \$80; §205.11(b)(1)(F) increases the mattress manufacturer permit fee for 50,000 to 100,000 articles per term by \$120; §205.11(b)(1)(G) increases the mattress manufacturer permit fee for over 100,000 articles per term by \$120; §205.11(b)(3)(A) increases the bedding product manufacturer permit fee for less than 1,000 articles per term by \$20; §205.11(b)(3)(B) changes the 2,000 to 9,999 articles per term to 1,000 to 9,999 articles per term to correct a typographical error in the current rule and also increases the bedding product manufacturer permit fee for 1,000 to 9,999 articles per term by \$25; §205.11(b)(3)(C) increases the bedding product manufacturer permit fee for 10,000 to 19,999 articles per term by \$30; §205.11(b)(3)(D) increases the bedding product manufacturer permit fee for 20,000 to 29,999 articles per term by \$40; §205.11(b)(3)(E) increases the bedding product

manufacturer permit fee for 30,000 to 49,999 articles per term by \$50; §205.11(b)(3)(F) increases the bedding product manufacturer permit fee for 50,000 to 99,999 articles per term by \$70; §205.11(b)(3)(G) increases the bedding product manufacturer permit fee for 100,000 to 200,000 articles per term by \$120; §205.11(b)(3)(H) increases the bedding product manufacturer permit fee for over 200,000 articles per term by \$120; §205.11(b)(6) increases the processor permit fee by \$10; §205.11(b)(7) increases the germicidal treatment permit fee by \$10; and §205.11(b)(8) increases the arts and crafts permit fee by \$5. In addition, amendments to §205.11(c)(1) change the department name from "Texas Department of Health" to "Department of State Health Services" to state the new department name.

Amendments to §205.44 contain an increase in the registration fee for manufacturers of hazardous substances for a two-year term. Specifically, §205.44(f)(1) increases the two-year term fee by \$60.

Amendments to §205.57 contain an increase in the inhalant abuse permit fee assessed for a two-year term. Specifically, §205.57(a) increases the two-year term fee by \$5. Amendments to §205.57(b) change the department name from "Texas Department of Health or its successor" to "Department of State Health Services" to state the new department name.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each fiscal year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in revenue to the state of \$88,582 in 2006 and \$132,874 in 2007 through 2010. These additional revenues will offset the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed. All businesses that manufacture mattresses; renovate mattresses; manufacture bedding products; wholesale or distribute bedding articles or filling materials; import bedding articles or filling materials; manufacture and/or process bulk filling materials; germicidally treat articles of bedding or filling materials; manufacture bedding articles other than mattresses; manufacture hazardous substances; or sell abusable volatile chemicals, including small businesses and micro-businesses, will have an approximate 10% increase in their fees. For bedding permit fees, the cost to small businesses and micro-businesses is less than to large businesses due to a fee schedule based upon articles per term manufactured. The increases for mattress manufacturers and bedding products range from \$20 to \$120 for a two-year term, depending on the number of items manufactured. The labeling of hazardous substances registration fee contained in §205.44 increases from \$570 to \$630 for a two-year term. The inhalant abuse permit fee in §205.57 increases from \$50 to \$55 for a two-year term. The §205.44 and §205.57 increased fees are the same for all businesses, regardless of size. There is also an economic impact on persons, including businesses, required to have permits or file registrations as those fees will increase. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to generate funding to operate the program to ensure the safety of the public with regard to bedding products, hazardous substances, and abusable volatile chemicals (inhalants).

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Michael J. Minoia, Environmental Health Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-6773, extension 2305 or by email to Michael.Minoia@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

LEGAL CERTIFICATION

The Department of State Health Services Deputy General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments to §§205.11, 205.44 and 205.57 are authorized by Health and Safety Code, §345.043, which authorizes fees for an annual and renewal permit in amounts reasonable and necessary to defray the cost of administering the program; Health and Safety Code, §501.026, which authorizes reasonable registration fees; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license designed to recover all direct and indirect costs; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments affect the Health and Safety Code, Chapters 345, 485, 501, and 1001; and Government Code, Chapter 531.

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LEGEND: (Proposed Amendments)

Single-Underline = Proposed new language

[Bold Print and Brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for designated subdivisions

§205.11. Permit Requirements; Types; Application; Conditions; Suspension.

(a) (No change.)

(b) Types of permit and permit fees.

(1) Mattress Manufacturer Permit. Required of all manufacturers of mattresses or box springs prior to shipping mattresses and/or box springs into or within this state for the purpose of resale. Permit fees are graduated based on the number of articles the manufacturer is requesting authorization to ship during the term of the permit. The fees are set out as follows:

(A) for less than 2,000 articles per term, [**a one-year term is \$100 and**] a two-year term is \$220 [**\$200**];

(B) 2,000 to 9,999 articles per term, [**a one-year term is \$150 and**] a two-year term is \$330 [**\$300**];

(C) 10,000 to 19,999 articles per term, [**a one-year term is \$200 and**] a two-year term is \$440 [**\$400**];

(D) 20,000 to 29,999 articles per term, [**a one-year term is \$300 and**] a two-year term is \$660 [**\$600**];

(E) 30,000 to 49,999 articles per term, [**a one-year term is \$400 and**] a two-year term is \$880 [**\$800**];

(F) 50,000 to 100,000 articles per term, [**a one-year term is \$600 and**] a two-year term is \$1,320 [**\$1,200**]; and

(G) over 100,000 articles per term, [**a one-year term is \$600 plus \$.03 for each article and**] a two-year term is \$1,320 [**\$1,200**] plus \$.03 for each article.

(2) (No change.)

(3) Bedding Product Manufacturer Permit. Required of all manufacturers of bedding products, other than mattresses and box springs, prior to shipping such articles in or within this state for the purpose of resale. Permit fees are graduated based on the number of articles the manufacturer is requesting authorization to ship during the term of the permit. The fees are set out as follows:

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(A) for less than 1,000 articles per term, [**a one-year term is \$100 and**] a two-year term is \$220 [**\$200**];

(B) 1,000 [**2,000**] to 9,999 articles per term, [**a one-year term is \$125 and**] a two-year term is \$275 [**\$250**];

(C) 10,000 to 19,999 articles per term, [**a one-year term is \$150 and**] a two-year term is \$330 [**\$300**];

(D) 20,000 to 29,999 articles per term, [**a one-year term is \$200 and**] a two-year term is \$440 [**\$400**];

(E) 30,000 to 49,999 articles per term, [**a one-year term is \$250 and**] a two-year term is \$550 [**\$500**];

(F) 50,000 to 99,999 articles per term, [**a one-year term is \$350 and**] a two-year term is \$770 [**\$700**];

(G) 100,000 to 200,000 articles per term, [**a one-year term is \$600 and**] a two-year term is \$1,320 [**\$1,200**]; and

(H) over 200,000 articles per term, [**a one-year term is \$600 plus \$.01 for each article and**] a two-year term is \$1,320 [**\$1,200**] plus \$.01 for each article.

(4) - (5) (No change.)

(6) Processor Permit. Required of all manufacturers and/or processors of bulk filling materials prior to selling and shipping such filling materials into this state. The [**annual**] permit fee is \$110 for a two-year term. [:]

[(A) \$50 for a one-year term; and]

[(B) \$100 for a two-year term.]

(7) Germicidal Treatment Permit. Required of all persons prior to the application of a germicidal treatment process, approved by the department, to articles of bedding and/or filling materials to be shipped into or to be sold in this state. The [**annual**] permit fee is \$110 for a two-year term. [:]

[(A) \$50 for a one-year term; and]

[(B) \$100 for a two-year term.]

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(8) Arts and Crafts Permit. Required of all persons who manufacture bedding articles other than mattresses (such as pillows, quilts, comforters), have no paid employees, and manufacture less than 250 articles per year for sale in this state. The **[annual]** permit fee is \$55 for a two-year term. [:]

[(A) \$25 for a one-year term; and]

[(B) \$50 for a two-year term.]

(c) Permit application.

(1) Application for an initial permit or to renew an expiring permit must be made through the department on an approved application form which may be obtained from the Product Safety Division, Department of State Health Services **[Texas Department of Health]**, 1100 West 49th Street, Austin, Texas 78756.

(2) - (4) (No change.)

(d) - (e) (No change.)

§205.44. Registration Fee for Manufacturers of Hazardous Substances.

(a) - (e) (No change.)

(f) Registration fees.

(1) Each initial registration statement and each refiling of the registration shall be accompanied by a registration fee of \$630 for a two-year term. **[as follows:]**

[(A) \$285 for a one-year term; and]

[(B) \$570 for a two-year term.]

(2) (No change.)

(g) - (i) (No change.)

§205.57. Permit Fee.

(a) Each application form submitted for a permit shall be accompanied by a fee of \$55 for a two-year term. **[as follows:]**

[(1) \$25 for a one-year term; and]

[(2) \$50 for a two-year term.]

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(b) The fee shall be paid by money order, certified check, or personal check and shall be made payable to the Department of State Health Services [**Texas Department of Health or its successor**]. Payment in cash shall not be accepted.

(c) - (d) (No change.)