

Title 25. HEALTH SERVICES
Part I. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 205. Product Safety
Subchapter A. Bedding Rules
Amendments §§205.1-205.17

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) proposes amendments to §§205.1-205.17 concerning the regulation of bedding products.

BACKGROUND AND PURPOSE

The amendments are necessary to implement House Bill (HB) 1752 passed during the 79th Legislature, Regular Session (2005), which relate to the regulation of germicidal treatment of secondhand bedding items. HB 1752 amends Health and Safety Code (HSC), Chapter 345 by adding §345.045, entitled “Minimum Sanitary Standards for Germicidal Treatment Permit,” which establishes minimum sanitary conditions for businesses holding a germicidal treatment permit. HB 1752 also authorizes the Executive Commissioner of the commission to promulgate rules to establish additional regulatory requirements for sanitary conditions, but exempts businesses that germicidally treat 10 or fewer items per week from these additional requirements.

Additional amendments are required to implement HB 2471 passed during the 80th Legislature, Regular Session (2007), which relate to the treatment and sale of certain bedding. This bill amends HSC, Chapter 345 by amending the definitions for “new” and “secondhand” and adding a new definition for “floor model.” HB 2471 also amended Subchapter A by adding §345.0065 “Applicability of Chapter to Floor Model.” These amendments exempt floor models from being regulated as secondhand, which formerly required that floor models be germicidally treated and tagged as secondhand.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 205.1-205.17 have been reviewed and the department has determined that the reasons for adopting the sections continue to exist because rules on this subject are needed to regulate the quality of bedding and to protect public health.

SECTION-BY-SECTION SUMMARY

Amendments to §§205.2 and 205.8 change the definitions of “new” and “secondhand,” add a new definition for “floor model,” and add §205.8(a)(1)(D), which is necessary due to a change in legislation exempting floor models from regulation as secondhand. Additional amendments to §§205.1, 205.2, 205.4-205.10, and 205.12 - 205.17 provide clarification and correction to the rules. Amendments to §205.3 reflect the new Federal Flammability Standards. Amendments to

§205.11 clarify language to reflect the two-year term for licenses, and implement changes to the minimum sanitary conditions for businesses holding a germicidal treatment permit.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each calendar year of the first five years §§205.1, 205.3 – 205.7, and 205.9 – 205.17 are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the sections as proposed. Regarding §205.2 and §205.8, there will be an effect on state government which is anticipated to decrease the number of germicidal treatment permits issued by 2%, and would result in a decrease in licensing revenue to the state of \$2,090 each year for calendar years one through five. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT

Ms. Tennyson has also determined that there will be no negative effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. Regarding §205.2 and §205.8, the financial burden of \$110 per two-year term for certain small and micro-businesses will be alleviated due to a change in legislation exempting floor models from regulation as secondhand, because approximately two percent of such businesses currently licensed will no longer require a license. 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 a clearer interpretation of the rules.

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 to reduce risks to human health from environmental exposure, nor is it expected to result in any of these adverse effects.

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 Andrea Lopez, Environmental Health Group, Policy, Standards, and Quality Assurance Unit, Environmental and Consumer Safety Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-6773, extension 2301, or by email to Andrea.Lopez@dshs.state.tx.us. Written comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The department's 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 are authorized by Health and Safety Code, §345.0345, Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the 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 Health and Safety Code, Chapter 1001. The proposed re-adoption of these rules is authorized by Government Code §2001.039, which requires each state agency to review and consider for re-adoption each rule adopted by the agency pursuant to the Government Code, Chapter 2001.

The proposed amendments affect the Health and Safety Code, Title 5, Chapter 345.