

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 this designated subdivision

§205.1. Purpose and Scope.

The purpose of these sections is to designate the requirements and the terms, definitions, nomenclature, and conditions as commonly used and recognized in the manufacture, sale, and distribution of bedding and furniture products and filling materials. Classifications of materials in these regulations are intended to have understandable meaning to regulated businesses and consumers. The definitions used are in conformity with those adopted by the majority of states, Canada, the Federal Trade Commission and the International Association of Bedding and Furniture Law Officials.

§205.2. Definitions.

(a) The following words and terms, when used in this chapter, shall have the following meanings unless the context otherwise specifically requires.

(1) - (2) (No change.)

(3) Bedding -- A mattress, mattress pad, mattress protector, box spring, sofa bed, studio couch, chair bed, convertible bed, convertible lounge, pillow, bolster, quilt, quilted spread, comforter, cot pad, sleeping bag, lounge chair pad, utility or all-purpose pad, crib pad, playpen pad, crib bumper pad, car bed pad, infant carrier pad, convertible stroller pad, bassinet pad, bed rest and lounge-type cushion, or a stuffed or filled article that can be used by a human for sleeping or reclining.

(4) - (8) (No change.)

(9) Floor Model -- New bedding placed in a retail sales area for display purposes.

(10) [(9)] Germicidal Treatment Operator -- A person who sanitizes bedding articles or filling materials by a method or process that has been approved by the department.

(11) [(10)] Importer -- A person who on his own account sells or distributes in this state bedding, or filling material to be used in bedding, that was manufactured or processed in a country other than the United States. The term does not include an affiliate or subsidiary if the ownership and name of the affiliate or subsidiary are the same as the manufacturer, and the affiliate or subsidiary is the exclusive sales outlet for the manufacturer.

(12) [(11)] Label, law label, labeled, tag and tagged -- May be used interchangeably and means any label or tag required to be on or affixed to finished bedding products and processed filling material and on which the information required is to appear.

(13) [(12)] Manufacturer -- A person whose principal business is the manufacture of bedding from new material for the purpose of resale in this state by a distributor, wholesaler, importer, or retail outlet or subsidiary outlet if the ownership and name are the same as the manufacturer, or if it is an exclusive sales outlet for the manufacturer, or both.

(14) [(13)] Material -- An article, substance, or part of an article or substance, used in the manufacture, repair, or renovation or bedding.

(15) [(14)] New -- Bedding or filling material that has had no previous use in any manner other than previous use as a floor model. [for any purpose.]

(16) [(15)] Pillows and cushions -- Any bag, case, or covering which has been stuffed or filled and which is not an integral part of another item of bedding or furniture but which can be used by human beings for sleeping, resting, or reclining purposes. The terms do not apply to pillows or cushions which do not exceed 10 inches in their greatest dimension or have permanently affixed figurines, statuettes, dolls, etc.

(17) [(16)] Processed filling material -- Felt, batting, pad, foam product, quilted product, or any other filling material which has been prepared, manufactured, or processed into a form in which it can be used in articles of bedding.

(18) [(17)] Processor -- A person who manufactures or processes, and sells in this state or for delivery in this state any filling materials, including felt, batting, pads, or foam, to be used or that could be used in bedding, other than frames or metal springs.

(19) [(18)] Recycled material -- Material that:

(A) is composed of recyclable material or that is derived from post consumer waste; and

(B) may be used in place of raw or virgin filling material in manufacturing, repairing, or renovating bedding.

(20) [(19)] Renovate -- To restore to a former condition or to a place in a good state of repair.

(21) [(20)] Secondhand -- Bedding or filling material with previous use in any manner, other than previous use as a floor model.

(22) [(21)] Sell -- Offer, or expose for sale, include in a sale, barter, trade, deliver, consign, lease, possess with intent to sell or dispose of in any commercial manner. For purposes of these sections, lease shall also include the term "rent" when used for commercial purposes.

(23) [(22)] Wholesaler -- A person located outside this state who on his own account sells, distributes, or jobs into this state to another for the purpose of resale bedding or filling material to be used in bedding. This does not include an affiliate or subsidiary if the ownership and the name of the affiliate or subsidiary are the same as the manufacturer, and the affiliate or subsidiary is the exclusive sales outlet for the manufacturer.

(b) (No change.)

§205.3. General Requirements.

(a) - (b) (No change.)

(c) Each item of bedding and processed filling material shall be labeled in conformity with the requirements of the Act and these regulations. This requirement does not apply to a custom upholstery [**customupholstery**] business that does not repair or renovate bedding for resale.

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

(f) The terms "all," "pure," "100%," or terms of similar meaning [**import**] are permitted only if the material is as stated. No tolerance is allowed where such terms are used.

(g) - (j) (No change.)

(k) Identification and storage of secondhand bedding articles and filling materials shall be as follows:

(1) Persons engaged in the manufacture, distribution, wholesaling, importation, renovation, processing, and/or germicidal treatment shall keep new and secondhand articles and/or materials segregated.

(2) - (3) (No change.)

(l) Mattresses and mattress pads manufactured, renovated or delivered into or within this state for purposes of sale in this state shall meet the federal standard for flammability of mattresses set forth in 16 Code of Federal Regulations, Parts [**Part**] 1632 and 1633.

§205.4. Labeling Requirements.

(a) It shall be unlawful to make any false or misleading statement on any label or tag required by the Act and these regulations. It [**it**] shall be unlawful for any person to remove,

deface, alter, or position any label or tag or statement thereon for the purpose of defeating the provisions of the Act and these regulations, except that the label or tag may be removed by the consumer.

(b) - (j) (No change.)

(k) Labels shall be affixed to the outer covering of bedding articles and shall be so located as to make the label and the information thereon completely and clearly visible to the purchaser at all times. Germicidal treatment label attachment methods shall have prior approval by the department. Specific locations for label attachments shall be as follows:

(1) (No change.)

(2) Articles such as quilted bedspreads, mattress protectors, quilts, etc., packaged in clear or see-through [**see through**] packaging material shall be folded in such a manner so that the label and printed matter thereon is visible to the purchaser.

(3) (No change.)

(4) Processed filling material identification tag location is optional, except that it shall be securely attached where clearly visible.

(5) - (7) (No change.)

(8) Attaching the label in a location or manner which, while the article of bedding is on display for sale, conceals the label from open view to the purchaser shall be considered [**as**] a willful act to intentionally defeat the intent of the Act and these regulations.

(l) The different types of required labels and illustrations of each are as follows:

(1) The label attached to bedding wholly manufactured from new materials shall have a minimum size of six square inches and shall state the following, plainly stamped or printed in black ink on all white material:

(A) - (D) (No change.)

(2) The label attached to bedding, any part of which is manufactured or renovated from secondhand or recycled material, other than bedding reworked, repaired, or renovated for the owner for the owner's own use, shall be at least 12 square inches and state, plainly stamped or printed in red ink on all white material:

(A) - (B) (No change)

(C) shall be in the following form:

Figure: 25 TAC §205.4(1)(2)(C) [Figure: 25 TAC §205.4(1)(2)(C)]

UNDER PENALTY OF LAW THIS TAG [LABEL] MUST NOT BE REMOVED EXCEPT BY THE CONSUMER
THIS ARTICLE CONTAINS SECOND HAND MATERIAL
REG. NO. _____

(3) The label attached to material or bedding that has been germicidally treated shall be at least 12 square inches and state, plainly stamped or printed in black ink on all yellow material:

(A) - (F) (No change.)

(G) shall be in the following form:

Figure: 25 TAC §205.4(l)(3)(G) [Figure: 25 TAC §205.4(l)(3)(G)]

<p style="text-align: center;">UNDER PENALTY OF LAW THIS TAG SHALL NOT BE REMOVED EXCEPT BY THE CONSUMER</p>
<p style="text-align: center;">Certification is made that this SECOND HAND (USED) ARTICLE SANITIZED</p> <p style="text-align: center;">This Article of Bedding Has Been Treated by a Germicidal Process Approved by the Texas Department of <u>State Health Services</u></p>
<p>Lot No. _____ Tag [Label] No. _____ Article _____ Method _____ Date _____</p>
<p>Reg No. _____</p>

(4) The processed filling material label is an identification label. The type and material of this label is optional. However, the label shall be visible, the printed matter shall be legible, generic terms shall be used as the descriptive terminology, and the processor's identification number assigned by the department shall be stated. Illustrations of a form for this label follow:

Figure: 25 TAC §205.4(l)(4) (No change.)

§205.5. Definitions and Designations of Filling Materials.

(a) (No change.)

(b) Down.

(1) The term "down" by itself may be used for the soft undercoating of waterfowl consisting of the light fluffy filaments grown from one quill-point but without any quill shaft. It is permissible **[permissible]** to use the name of the fowl from which the down is obtained, such as goose down, duck down, etc.

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

(5) The tolerance levels for the labeling of down are as follows:

(A) a minimum of 80% down, plumules, and down fiber consisting of: **[;]**

(i) **[consisting of]** down and plumules--minimum of 70%; and

(ii) **[consisting of]** down fiber--minimum of 10%;

(B) the remaining 20% may consist of a combination of the following:

(i) – (iv) (No change.)

(v) residue--maximum 2.0%; and/or

(vi) (No change.)

(6) (No change.)

(c) Feathers.

(1) - (9) (No change.)

(10) Feather mixtures **[when]** from two or more species shall be designated by name, character, and percentage by weight of each constituent in order of predominance, or **[mixtures may be designated]** by lowest grade as to species of origin (grades in descending order: goose, duck, turkey, and chicken).

(d) Foam.

(1) (No change.)

(2) Foam is polymerized material consisting of a mass of thin-walled cells produced chemically or physically which is created by the interaction of an ester or **[an]** ether and a carbamic acid derivative.

(3) The term "synthetic foam" may be used as a definition in lieu of the following generic terms:

(A) - (D) (No change.)

(E) vinyl foam; or **[and]**

(F) (No change.)

(4) - (6) (No change.)

(e) Hair.

(1) Hair -- The coarse filamentous epidermal outgrowth of such mammals as horses, cattle, hogs, and goats when used in the manufacture of bedding, upholstered furniture, and filling materials. It shall be clean, properly cured, and free from epidermis, excreta, and other foreign or objectionable substances and odors.

(2) (No change.)

(f) Manufactured fibers.

(1) Acetate fiber -- Manufactured fiber in which the fiber-forming substance is cellulose acetate. Where not less than 92% of hydroxyl groups are acetylated, the term triacetate may be used as a generic description of the fiber.

(2) - (17) (No change.)

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

(j) Gel. Generic term for any filling material of a semi-solid form, typically encased in a leak proof fabric cover and consisting of a mixture of water or other liquid base, dissolved chemicals, and/or a suspension of other chemicals, which provides special ergonomic and resiliency properties.

(k) (No change.)

(l) Universal definitions. The following terms are common industry definitions for fibers obtained as by-products during the various machine operations necessary in the manufacture of cotton yarn up to but not including the process of spinning. These terms must be preceded by the name of the textile fiber from which it is produced.

(1) - (4) (No change.)

(5) Picker, picker motes, or motes -- Matted or tangled masses of fiber resulting from the opening and cleaning of fibers in the opener room of the textile mill.

(6) (No change.)

§205.6. Adjunctive Terms.

(a) - (f) (No change.)

(g) Pieces -- Urethane foam and rubber products which have been cut or broken into pieces of indefinite shape, size, or form, but not shredded. The term applies to loose as well as cemented or bonded filling material (e.g., urethane foam pieces, latex foam rubber pieces).

(h) - (k) (No change.)

(l) Waste -- By-products or reclaimed materials which have the following characteristics:

(1) cotton waste containing more than 10% of hull, leaf, stem, and pulp; or

(2) (No change.)

(m) (No change.)

§205.7. Suggested Terminology for Various By-Products.

(a) (No change.)

(b) Examples of terminology for blended filling materials consisting of various unknown kinds and percentages of fibers, threads, fabric pieces, etc., and which have [**has**] been processed into a pad or felt form are as follows:

(1) - (4) (No change.)

(c) (No change.)

§205.8. Germicidal Treatment Requirements; Methods.

(a) General Requirements.

(1) Secondhand bedding articles.

(A) - (C) (No change.)

(D) A floor model that has also been used for another purpose, or that has been previously sold, leased, rented or otherwise distributed to the public is considered secondhand bedding and is subject to all secondhand bedding regulations.

(2) Renovated bedding articles.

(A) - (B) (No change.)

(C) The outer covers on secondhand mattresses and box springs to be renovated **[enovated]** or rebuilt for resale shall be removed to expose the concealed filling materials. Materials described in paragraph (2)(B) of this subsection shall be removed and discarded. When the chemical method of germicidal treatment is used, the mattresses and box springs shall be treated prior to the installation of new covers. Secondhand covers shall not be reused regardless of the germicidal treatment method.

(b) Treatment methods.

(1) Chemical spray.

(A) (No change.)

(B) Mechanical, compressed air, hand pump, or electric sprayers must be used and they must be of the continuous spray type. No intermittent **[intermittant]** spray devices are allowed.

(C) - (G) (No change.)

(2) Dry heat.

(A) (No change.)

(B) The dry heat chamber shall be equipped with a recording clock to accurately record the time and temperature. The clock shall be attached on the outside of the chamber and the heat bulb sending unit must be installed within the chamber at the furthest **[furtherest]** point practical from the entry of the heat.

(C) - (D) (No change.).

(3) Steam.

(A) (No change.)

(B) An alternate method may consist of two applications of streaming steam, maintained for a period of one hour each, to be applied at intervals of no **[not]** less than six hours and no **[nor]** more than 24 hours.

(4) - (6) (No change.)

§205.9. Sanitary Premises.

Every person engaged in the business of manufacturing, renovating, or processing bedding and/or bedding materials shall keep each business location in a sanitary condition by complying with the following minimum requirements. [:]

(1) (No change.)

(2) All work rooms shall be well ventilated, and high dust counts, odors, and stale air shall not be permitted. Dust control measures may include the housing or partitioning of dust-producing [**dust producing**] machinery from other work rooms and the installation of metal hoods and extraction fans over dust-producing [**dust producing**] machinery.

(3) - (4) (No change.)

(5) Walls and ceilings of all rooms where materials are stored, processed, or otherwise used in the manufacturing or renovating of bedding, shall be of tight, smooth construction; [,] shall be painted; [,] and shall be kept clean and in good repair. Cracks or recesses which would tend to harbor vermin and pathogens shall not be allowed.

(6) (No change.)

(7) There shall be no living quarters in the rooms, or opening directly into the rooms, where materials are stored, processed or otherwise used in the manufacturing or renovating of bedding.

(8) (No change.)

(9) Adequate and clean hand-washing [**hand washing**] facilities shall be provided. One lavatory (wash basin) with adequate and acceptable water supply shall be provided for every 20 employees or portion thereof up to 100 persons and one lavatory (wash basin) for each additional 25 persons or portions thereof. Soap or a suitable cleaning agent shall be provided at each lavatory.

(10) (No change.)

§205.10. Adjustments to the Minimum Requirements.

Through its authorized representatives, the department shall [**The department shall, through its authorized representatives,**] have the right to require adjustments to the minimum requirements set forth in these sections when such adjustments are deemed necessary for the protection of the public health and public welfare.

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

(a) General requirements.

(1) - (4) (No change.)

(5) **[Prior to January 1, 2005, the term of all licenses is one-year and expires on the anniversary of the effective date, unless renewed.]** Effective January 1, 2005, the term of all licenses is two years. **[Some licenses will be renewed for a one-year term in 2005, in a manner to be determined by the department and two years thereafter.]** The department may prorate permit fees as appropriate to provide for a common expiration date for persons holding and/or applying for more than one permit.

(6) (No change.)

(b) Types of permit and permit fees.

(1) - (3) (No change.)

(4) Wholesaler/Distributor Permit. Required of all wholesalers and distributors of bedding articles or filling materials prior to shipping such articles or filling materials into this state for the purpose of resale. Permit fees are graduated based on the number of articles or units of filling materials the wholesaler/distributor is requesting authorization to ship during the permit period. The fees are set out in **[Schedule B,]** subsection (b)(3) of this section.

(5) Importer Permit. Required of all importers of bedding articles or filling materials prior to shipping such articles or filling materials into this state for the purpose of resale. Permit fees are graduated based on the number of imported articles or units of filling materials the importer is requesting authorization to ship during the permit period. The fees are set out **[in Schedule B]** in subsection (b)(3) of this section.

(6) - (8) (No change.)

(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 Program, Environmental and Sanitation Licensing Group, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

(2) A separate permit application must be completed and submitted for each specific **[permit applied for at each specific]** business location or plant location.

(3) (No change.)

(4) Additional information that may be required by the department includes the following:

(A) a copy of current permit(s) **[permits]** or license(s) **[licenses]** issued by another state_[,] or states;

(B) a copy of the most recent bedding inspection report if the business or plant is located in a city, county, state or country that has bedding laws and regulations and conducts inspections;

(C) - (D) (No change.)

(E) a confirmation of compliance with applicable federal flammability standards for mattresses and mattress pads or test results from an independent testing facility acceptable to the department;

(F) an explanation of the germicidal treatment method to be applied to second-hand articles of bedding; and

(G) (No change.)

(d) Permit conditions.

(1) - (4) (No change.)

(5) Each person required to obtain a permit shall maintain each business location in a sanitary condition free from refuse, dirt, contamination, insects, and vermin that complies with §205.9 of this title. The holder of a germicidal treatment permit who germicidally treats no more than 10 items at the permit holder's place of business each week is exempt from any additional requirements regulating the sanitary condition of a permit holder's place of business.

(6) - (7) (No change.)

(e) Permit denial, suspension, revocation.

(1) An application for permit issuance or renewal will be denied by the department if the applicant fails or refuses to provide a complete application, pay the appropriate permit fee, provide requested information or product samples or test results, or if the business location or plant location is not in a sanitary condition in violation of the Act or these [and] regulations.

(2) (No change.)

(3) A permit may be suspended or revoked by the department if the permit holder fails to maintain the permitted business location or plant location in a sanitary condition;[,] manufactures or renovates and sells mattresses or mattress pads that do not comply with federal flammability standards;[,] fails to germicidally treat articles of used bedding prior to resale;[,] or commits any other or repeated violations of the Act or these regulations.

§205.12. Administrative Penalty.

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

(f) Violations shall be placed in one of the following severity levels.[:]

(1) Critical violation. Severity Level III includes the types of violations that are the most significant and present a threat to public health and safety. The base penalty for a first violation will generally not exceed \$10,000 per day, per violation. The same violation continuing after written notification by the department constitutes [**constitute**] separate violations. Examples of Severity Level III violations include but are not limited to:

(A) - (J) (No change.)

(2) - (3) (No change.)

(g) - (n) (No change.)

§205.13. Detained or Embargoed Bedding.

(a) - (b) (No change.)

(c) The notice or marking on detained or embargoed bedding must warn all persons not to use the bedding, remove the bedding from the premises, or dispose of the bedding by sale or otherwise until permission for use, removal, or disposal is given by the commissioner, an [**the**] authorized agent, or a court.

(d) A person may not use detained or embargoed bedding, remove detained or embargoed bedding from the premises, or dispose of detained or embargoed bedding by sale or otherwise without permission of the commissioner, an [**the**] authorized agent, or a court.

(e) (No change.)

§205.14. Removal Order for Detained or Embargoed Bedding.

(a) - (c) (No change.)

(d) The commissioner may request the attorney general to bring an action in the district court in Travis County to recover the costs of the transfer. In a judgment [**judgement**] in favor of the state, the court may award costs, attorney fees, court costs, and interest from the time the expense was incurred through the time the department was reimbursed.

§205.15. Condemnation.

Action [**An action**] for [**the**] condemnation of bedding may be brought before a court in whose jurisdiction the bedding is located, detained, or embargoed if the bedding violates the Act or these regulations.

§205.16. Recall Orders.

(a) - (f) (No change.)

(g) If the claimant or the claimant's agent fails or refuses to carry out the recall order in a timely manner[,], the commissioner may provide for the recall of the bedding. The costs of the recall shall be assessed against the claimant of the bedding or the claimant's agent.

(h) (No change.)

§205.17. Inspection.

(a) To determine compliance with the Act or regulations, an authorized representative, or representatives, may enter a location [**place**] at which:

(1) - (3) (No change.)

(b) - (c) (No change.)