

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(3) and 2101, et seq.
(16 Del.C. §§122(3) and 2101 et seq.)
16 DE Admin. Code 4460

FINAL

ORDER

4460 Mattresses, Pillows and Bedding

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Mattresses, Pillows and Bedding. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 **Delaware Code**, §122(3) and 16 **Delaware Code**, 2101, et seq.

On August 1, 2011 (Volume 15, Issue 2), DHSS published in the Delaware *Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by August 31, 2011, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

No written comments were received during the public comment period. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Mattresses, Pillows and Bedding were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

The public comment period was open from August 1, 2011 through August 31, 2011. No comments were received on the proposed regulations during the public comment period and no changes have been made to the proposed regulations.

The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

FINDINGS OF FACT

There were no public comments received. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Mattresses, Pillows and Bedding are adopted and shall become effective October 11, 2011, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

4460 Mattresses, Pillows and Bedding

4.0 Definitions

1.1 As used in this chapter, unless the context requires a different meaning:

"Bedding" shall mean ~~any mattress, mattress pad, mattress protector pad, box spring, upholstered spring, upholstered bed, davenport, upholstered sofa bed, quilted pad, comforter, bolster, cushion, pillow, featherbed, sleeping bag or any other bag, case or cover made of leather, textile or other material which is stuffed or filled in whole or in part with concealed material, which is intended for use by any human being for sleeping or reclining purposes.~~

"Comfortable" means ~~any cover, quilt or quilted article made of cotton or other textile material and stuffed or filled with fiber, cotton, wool, hair, jute, feathers, feather down, kapok or other soft material.~~

"Mattress" means ~~any quilted pad, mattress, mattress pad, mattress protector, bunk, quilt or box spring stuffed or filled with excelsior, straw, hay, grass, cornhusks, moss, fiber, cotton, wool, hair, jute, kapok or other soft material, to be used on a couch or other bed for sleeping purposes.~~

"New" means any material or article which has not been previously manufactured or used for any purpose.

"Pillows" "Bolster" or "Featherbed" mean any bag, case or covering made of cotton or other textile material, and stuffed or filled with excelsior, straw, hay, grass, cornhusks, moss, fiber, cotton, wool, hair, jute, feathers, feather down, kapok or other soft material to be used on a bed or other article for sleeping purposes.

"Secondhand" means any material or article of which prior use has been made.

"Shoddy" means any material which has been spun into yarn, knit or woven into fabric and subsequently cut up, torn up, broken up or ground up.

2.0 Sterilization and Disinfection of Materials – Required

2.1 No person shall employ or use in the making or renovating of any mattress, pillow, bolster, featherbed or comfortable:

2.1.1 Any material known as "shoddy" or any fabric or material from which shoddy is constructed;

2.1.2 Any secondhand material;

2.1.3 Any new or secondhand feathers, unless such shoddy, secondhand material or new or secondhand feathers have been sterilized and disinfected by a reasonable process approved by the Department of Health and Social Services.

3.0 Permit for Sterilization, Disinfection, Etc.; Requirements For Issuance; Fee

3.1 Any person engaged in the making, remaking or renovating of any mattress, pillow, bolster or comfortable in which secondhand material is used, or in the making of any new or secondhand feather or down filled article or engaged in sterilizing and disinfecting any material, feathers or article coming under this chapter, shall submit to the Department of Health and Social Services for approval a reasonable and effective process, together with duplicate plans of apparatus or auxiliary devices, for the sterilization and disinfection of secondhand material, feathers and secondhand articles enumerated in this section.

3.2 Upon the approval of the process for sterilization and disinfection, a numbered permit for its use shall be issued to the applicant by the Department of Health and Social Services. Such permit shall expire 1 year from date of approval and issue. Every person to whom a permit has been issued shall keep such permit conspicuously posted in the person's office or place of business. Refusal to display such permit in accordance with this chapter shall be sufficient reason to revoke and forfeit the permit.

3.2.1 For all permits issued as required by this chapter (not including, however, by the term "permits" the "tags" otherwise referred to in this chapter) there shall at time of issue thereof be paid by the applicant to the Department of Health and Social Services a fee of \$50.

3.3 Nothing in this section shall prevent any person engaged in the making, remaking, renovating or sale of any article described in this section, which requires sterilizing and disinfecting under this section, from having such sterilizing and disinfecting performed by any person to whom a permit for such purposes has been issued, provided the number of the permit shall appear in the statement on the tag attached to the article.

4.0 Inspection of Premises

All places where any mattress, pillow, bolster, featherbed or comfortable is made, remade or renovated, or where materials for articles named in this section are prepared, or establishment where the articles are offered for sale or are in possession of any person with intent to sell, deliver or consign them, or establishment where sterilizing and disinfecting are performed, shall be subject to inspection by the Department of Health and Social Services to ascertain whether the materials and the finished articles enumerated in this section conform to the requirements of this chapter.

5.0 Selling or Leasing Used Mattresses; Sterilization and Disinfection

5.1 No person shall sell, lease, offer to sell or lease, or deliver or consign in sale or lease, or have in the person's possession with intent to sell, lease, deliver or consign in sale or lease:

5.1.1 Any mattress, pillow, bolster, featherbed or comfortable made, remade or renovated in violation of this chapter;

5.1.2 Any secondhand mattress, pillow, bolster, featherbed or comfortable, unless since last used it has been thoroughly sterilized and disinfected by a reasonable process approved by the Department of Health and Social Services.

6.0 Tagging; Regulations and Prohibitions

- 6.1 Each and every mattress or article covered by this chapter, other than a feather or down filled pillow, bolster, bed or comforter, shall bear securely attached thereto and visible on the outside covering a tag of cloth or other substantial material upon which shall be plainly and indelibly stamped or printed in English:
 - 6.1.1 A statement showing the kind of materials used in filling the mattress or article and whether the materials used in filling are wholly new or secondhand or partly secondhand;
 - 6.1.2 The word "secondhand" upon any article of which prior use has been made;
 - 6.1.3 The number of the permit issued for sterilizing and disinfecting; and
 - 6.1.4 The registry number used in applying and enforcing the tagging and inspection provisions of this chapter.
- 6.2 Each and every pillow or other article covered by this chapter in which feathers or down are used shall bear securely attached thereto and visible on the outside covering a substantial cloth tag upon which shall be plainly and indelibly stamped or printed in English:
 - 6.2.1 A statement that the feathers or down have been sterilized and disinfected in accordance with this chapter;
 - 6.2.2 The number of the permit issued for sterilizing and disinfecting the feathers or down;
 - 6.2.3 The word "secondhand" upon a feather or down filled article of which prior use has been made; and
 - 6.2.4 The registry number used in applying and enforcing the tagging and inspection provisions of this chapter.
- 6.3 No additional information shall be contained in the statements. The statement of materials used in filling must be in plain type not less than one-eighth inch in height. The tag required by this chapter to be attached to any article covered by this chapter shall be not less than 6 square inches in size.
- 6.4 The word "felt," or words of like import if any other than garnetted materials are used in filling, or the words "curled hair," or words of like import if other than curled hair is used in filling, shall not be used exclusively in the statement concerning any mattress, pillow, bolster or comfortable.
- 6.5 No person shall make any false, untrue or misleading statement, term or designation on the tag or remove, deface, alter or in any manner attempt to remove, deface or alter the tag required by this chapter or cause to be removed, defaced or altered any statement on a tag placed upon any article included in this chapter.

7.0 Registration and Issuance of Registry Numbers

The Department of Health and Social Services shall, upon application to it by any person entitled thereto, register each applicant, issue a permit and assign a registry number by which number applicants shall thereafter be identified in applying and enforcing the tagging and inspection of this chapter.

8.0 Registration and Permit Fee

- 8.1 The initial annual permit fee and subsequent annual renewal fee under this chapter for manufacturers of bedding products within the State or manufacturers of such products who ship said products into this State shall be as follows:
 - 8.1.1 Bedding manufacturer..... \$50.00

9.0 Renewal of Permit

Permits shall remain effective only during a calendar year beginning January 1, and ending December 31, or any remaining portion of a calendar year beginning on the date the permit is issued. Applications for renewal of the permit must be made within the 60-day period preceding expiration of the permit currently held by the applicant. The fee for renewal of a manufacturer's permit shall be \$50.

10.0 Disposition of Fees

All fees collected under this chapter shall be paid to the Department of Health and Social Services and when so paid shall be turned over by the Department of Health and Social Services to the State Treasurer and credited to the General Fund of the State.

11.0 Inspection of Products and Plants of Nonresidents

- 11.1 It is the intent of this chapter to prevent both the manufacture and the sale within this State of any of the articles enumerated in section 5.0 of this regulation, except in conformity to and in compliance with this chapter. Inasmuch, however, as some of the articles so enumerated may be made or the material used in the manufacture or renovation thereof may be processed outside of the limits of this State, it is expressly provided that where the person so manufacturing any such article or processing any such material shall have or operate a plant outside of the limits of this State the Department of Health and Social Services may, in its discretion, in lieu of a physical inspection of the plant of such nonresident person, satisfy itself by examination of the product

~~made or possessed by such nonresident or by such other means as the Department of Health and Social Services Board deems adequate, of the propriety of issuing to such nonresident the permit required by this chapter or of renewing or keeping in force a permit so issued.~~

- 11.2 ~~In the event that at any time the Department of Health and Social Services deems it necessary to make physical inspection of any plant or factory of the nonresident, it may require the payment by such nonresident of such sum as may cover the reasonable traveling charges entailed by such physical inspection and refuse to issue, or revoke or suspend, any permit until or unless such charges are so paid.~~

12.0 Enforcement; Rules and Regulations; Provisions Subject to Chapter 23 of Title 11

- 12.1 ~~The Department of Health and Social Services, through its officers and employees, is charged with the administration and enforcement of this chapter and may take for evidence, at any trial involving violation of this chapter, any article made or offered for sale in violation of this chapter. The Department of Health and Social Services shall make and enforce reasonable rules and regulations for the enforcement of this chapter.~~
- 12.2 ~~This section is subject to Chapter 23 of Title 11. If there is any conflict or inconsistency between this section and such chapter, the latter shall prevail.~~

13.0 Penalties; Appeals

- 13.1 ~~Whoever violates this chapter or the rules and regulations adopted thereunder shall be fined for each offense not less than \$10 nor more than \$50. In default of the payment of such fine the violator shall be imprisoned for not less than 10 days for each separate offense. The total term of imprisonment at any 1 time for additional offenses shall not exceed 10 months.~~
- 13.2 ~~Each mattress, mattress pad, mattress protector pad, box spring, upholstered spring, upholstered bed, davenport, upholstered sofa bed, quilted pad, comforter, bolster, cushion, pillow, featherbed or sleeping bag made or remade, or renovated, sold, offered for sale, delivered or consigned contrary to this chapter shall constitute a separate offense.~~
- 13.3 ~~Any person convicted of an offense under this section, before a justice of the peace, may appeal the judgment of conviction to the Court of Common Pleas of the county.~~

14.0 Revocation of Permit

~~The Department of Health and Social Services may revoke any permit issued under this chapter if the person to whom the permit was issued has violated this chapter or the rules or regulations established thereunder.~~

1.0 Definitions

For purposes of these Regulations the following definitions shall apply:

"Bedding" means any mattress, mattress pad, mattress protector pad, box spring, upholstered spring, upholstered bed, davenport, upholstered sofa bed, quilted pad, comforter, bolster, cushion, pillow, featherbed, sleeping bag or any other bag, case or cover made of leather, textile or other material which is stuffed or filled in whole or in part with concealed material, which is intended for use by any human being for sleeping or reclining purposes.

"Comforter" means any cover, quilt or quilted article made of cotton or other textile material and stuffed or filled with fiber, cotton, wool, hair, jute, feathers, feather down, kapok or other soft material.

"Department" means the Delaware Department of Health and Social Services.

"Mattress" means any quilted pad, mattress, mattress pad, mattress protector, bunk, quilt or box spring stuffed or filled with excelsior, straw, hay, grass, cornhusks, moss, fiber, cotton, wool, hair, jute, kapok or other soft material, to be used on a couch or other bed for sleeping purposes.

"New" means any material or article which has not been previously manufactured or used for any purpose.

"Person" means an individual, corporation, business trust, estate trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.

"Pillow", "Bolster", or "Featherbed" mean any bag, case or covering made of cotton or other textile material, and stuffed or filled with excelsior, straw, hay, grass, cornhusks, moss, fiber, cotton, wool, hair, jute, feathers, feather down, kapok or other soft material to be used on a bed or other article for sleeping purposes.

"Secondhand" means any material or article of which prior use has been made.

"Shoddy" means any material which has been spun into yarn, knit or woven into fabric and subsequently cut up, torn up, broken up or ground up.

2.0 Restrictions and Prohibitions

2.1 Shoddy, Secondhand Material and Feathers

2.1.1 No person shall employ or use in the making or renovating of any mattress, pillow, bolster, featherbed or comforter any of the following:

2.1.1.1 Material known as "shoddy" or any fabric or material from which shoddy is constructed;

2.1.1.2 Secondhand material; or

2.1.1.3 New or secondhand feathers.

2.1.2 A person may use shoddy, secondhand material or new or secondhand feathers if the shoddy, secondhand material or new or secondhand feathers have been sterilized and disinfected by a reasonable process approved by the Department.

2.2 Used Mattresses, Pillows, Bolsters, Featherbeds and Comforters

2.2.1 No person shall sell, lease, offer to sell or lease, or deliver or consign in sale or lease, or have in the person's possession with intent to sell, lease, deliver or consign in sale or lease any of the following:

2.2.1.1 A mattress, pillow, bolster, featherbed or comforter made, remade or renovated in violation of these Regulations; or

2.2.1.2 A secondhand mattress, pillow, bolster, featherbed or comforter unless since its last use it has been thoroughly sterilized and disinfected by a reasonable process approved by the Department.

3.0 Operational Requirements

3.1 Permits

3.1.1 Any person engaged in the making, remaking or renovating of any mattress, pillow, bolster or comforter in which secondhand material is used; or in the making of any new or secondhand feather or down filled article; or the sterilizing and disinfecting of any material, feathers or article coming under these Regulations, shall submit to the Department for approval a reasonable and effective process, together with duplicate plans of apparatus or auxiliary devices, for the sterilization and disinfection of materials, feathers and articles enumerated in this section.

3.1.2 Upon the approval of the process for sterilization and disinfection, a numbered permit shall be issued to the applicant by the Department. Permits shall remain effective only during a calendar year beginning January 1, and ending December 31, or any remaining portion of a calendar year beginning on the date the permit is issued.

3.1.3 Every person to whom a permit has been issued shall keep such permit conspicuously posted in the person's office or place of business. Refusal to display such permit in accordance with these Regulations shall be sufficient reason for revocation of the permit by the Department.

3.1.4 Nothing in this section shall prevent any person engaged in the making, remaking, renovating or sale of any article, which requires sterilizing and disinfecting under this section, from having such sterilizing and disinfecting performed by any person to whom a permit for such purposes has been issued, provided the number of the permit shall appear in the statement on the tag attached to the article.

3.2 Initial Permit Fee. The initial permit fee for manufacturers of bedding products within the State or manufacturers of such products who ship said products into this State shall be \$50.00.

3.3 Renewal of Permit

3.3.1 Applications for renewal of a permit must be made within the 60-day period preceding expiration of the permit currently held by the applicant.

3.3.2 The fee for renewal of a permit shall be \$50.00.

3.4 Registry Numbers. The Department shall, upon application to it by any person entitled thereto, register each applicant, issue a permit, and assign a registry number by which number applicants shall thereafter be identified.

4.0 Inspections

4.1 Inspection of Premises.

4.2.1 All places where any mattress, pillow, bolster, featherbed or comforter is made, remade or renovated, or where materials for articles named in these Regulations are prepared, or establishment where the articles are offered for sale or are in possession of any person with intent to sell, deliver or consign them, or establishment where sterilizing and disinfecting are performed, shall be subject to inspection by the Department to ascertain whether the materials and the finished articles conform to the requirements of these Regulations.

4.2 Inspection of Products and Plants of Nonresidents

- 4.2.1 The Department may make physical inspection of any plant or factory of a nonresident whose products are manufactured or sold in this State. Inasmuch, however, as some of the articles so enumerated may be made or the material used in the manufacture or renovation thereof may be processed outside of the limits of this State, it is expressly provided that where the person so manufacturing any such article or processing any such material shall have or operate a plant outside of the limits of this State the Department may, in its discretion, in lieu of a physical inspection of the plant of such nonresident person, satisfy itself by examination of the product made or possessed by such nonresident or by such other means as the Department deems adequate, of the propriety of issuing to such nonresident the permit required by these Regulations or of renewing or keeping in force a permit so issued.
- 4.2.2 In the event that at any time the Department deems it necessary to make physical inspection of any plant or factory of a nonresident, it may require the payment by such nonresident of such sum as may cover the reasonable traveling charges entailed by such physical inspection. The Department may refuse to issue, or may revoke or suspend, any permit until or unless such charges are so paid.

5.0 Tagging

- 5.1 Statement Required on Articles Not Containing Feather or Down. Each and every mattress or article covered by these Regulations, other than a feather or down filled pillow, bolster, bed or comforter, shall bear securely attached thereto and visible on the outside covering, a tag of cloth or other substantial material upon which shall be plainly and indelibly stamped or printed in English the following:
- 5.1.1 A statement showing the kind of materials used in filling the mattress or article and whether the materials used in filling are wholly new or secondhand or partly secondhand;
- 5.1.2 The word "secondhand" upon any article of which prior use has been made;
- 5.1.3 The number of the permit issued for sterilizing and disinfecting; and
- 5.1.4 The registry number used in applying and enforcing the tagging and inspection provisions of these Regulations.
- 5.2 Statement Required on Articles Containing Feather or Down. Each and every pillow or other article covered by these Regulations in which feathers or down are used shall bear securely attached thereto and visible on the outside covering, a tag of cloth or other substantial material upon which shall be plainly and indelibly stamped or printed in English the following:
- 5.2.1 A statement that the feathers or down have been sterilized and disinfected in accordance with these Regulations;
- 5.2.2 The word "secondhand" upon a feather or down filled article of which prior use has been made;
- 5.2.3 The number of the permit issued for sterilizing and disinfecting the feathers or down; and
- 5.2.4 The registry number used in applying and enforcing the tagging and inspection provisions of these Regulations.
- 5.3 Specifications
- 5.3.1 The statement of materials used in filling must be in plain type not less than one-eighth inch in height.
- 5.3.2 The tag required by these Regulations to be attached to any article covered by these Regulations shall be not less than 6 square inches in size.
- 5.4 Prohibited Statements
- 5.4.1 No additional information other than what is mentioned in Sections 5.1 and 5.2 of these Regulations shall appear on the tag.
- 5.4.2 The word "felt," or words of like import if any other than garneted materials are used in filling, or the words "curled hair," or words of like import if other than curled hair is used in filling, shall not be used exclusively in the statement concerning any mattress, pillow, bolster or comforter.
- 5.5 False, Untrue or Misleading Statements. No person shall make any false, untrue or misleading statement, term or designation on the tag.
- 5.6 Removal, Defacing or Altering Prohibited. No person shall remove, deface, alter or in any manner attempt to remove, deface or alter the tag required by these Regulations or cause to be removed, defaced or altered any statement on a tag required by these Regulations. Nothing in this section shall prohibit the removal of such tag by the final consumer of the product.

6.0 Compliance

- 6.1 Enforcement

6.1.1 The Department, through its officers and employees, is charged with the administration and enforcement of these Regulations and may take for evidence, at any trial involving violation of these Regulations, any article made or offered for sale in violation of these Regulations.

6.1.2 These Regulations are subject to Chapter 23 of Title 11. If there is any conflict or inconsistency between these Regulations and Chapter 23, the latter shall prevail.

6.2 Penalties

6.2.1 Whoever violates these Regulations shall be fined for each offense not less than \$10.00 nor more than \$50.00. In default of the payment of such fine the violator shall be imprisoned for not less than 10 days for each separate offense. The total term of imprisonment at any one (1) time for additional offenses shall not exceed ten (10) months.

6.2.2 Each mattress, mattress pad, mattress protector pad, box spring, upholstered spring, upholstered bed, davenport, upholstered sofa bed, quilted pad, comforter, bolster, cushion, pillow, featherbed or sleeping bag made or remade, or renovated, sold, offered for sale, delivered or consigned contrary to these Regulations shall constitute a separate offense.

6.2.3 In addition to any fine or imprisonment imposed, the Department may revoke any permit issued under these Regulations for a violation of these Regulations.

6.3 Appeals.

6.3.1 Any person convicted of an offense under this section before a Justice of the Peace, may appeal the judgment of conviction to the Court of Common Pleas.

15 DE Reg. 528 (10/01/11) (Final)