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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8 VAC20-530
VAC Chapter title(s)	Regulations Governing Criteria to Identify Toxic Art Materials; Labeling; Use in Elementary Grades Prohibited
Date this document prepared	October 24, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Board" means the Virginia Board of Education.
"Department" means the Virginia Department of Education.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Board’s overall regulatory authority is found in § 22.1-16 of the Code of Virginia, which states that “[t]he Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of [Title 22.1 of the Code of Virginia].”

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

No alternatives to regulation were considered. As § 22.1-274.1 of the Code of Virginia requires the State Department of Education, in cooperation with the State Department of Health, to develop criteria to identify toxic art materials. However, from the time Chapter 530 was last revised in 1988, the federal Consumer Product Safety Commission has enacted new federal requirements concerning toxic art materials.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
None	None	None

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

8VAC20-530 is necessary for the protection of public health, safety, and welfare. The Board must require school divisions to evaluate all art materials used in schools and identify those which are toxic. All materials used in the public schools which meet the criteria as toxic shall be so labeled and the use of such art materials shall be prohibited in kindergarten through grade five.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The periodic review found that chapter 8VAC20-530 overlapped, duplicated, and conflicted with federal law in several instances. The periodic review found that this chapter does not reflect changes made within the Labeling of Hazardous Art Materials Act (“LHAMA”), 15 U.S.C. 1277 (Pub. L. 100-695, enacted November 18, 1988) which provided that, as of November 18, 1990, “the requirements for the labeling of art materials set forth in the version of the standard of the American Society for Testing and Materials [“ASTM”] designated D-4236 that is in effect on [November 18, 1988] ... shall be deemed to be a regulation issued by the Consumer Product Safety Commission under section 3(b)” of the Federal Hazardous Substances Act, 15 U.S.C. 1262(b). Section 16 CFR 1500 now includes the requirements of ASTM D-4236 in paragraph (b)(8)(i), along with other requirements made applicable to art materials by LHAMA. The substance of the requirements specified in LHAMA became effective on November 18, 1990, as mandated by Congress. As a result, the current chapter could be significantly shortened by defaulting to the federal requirements.

The specific regulatory requirements of Chapter 530, and as required by §§ 22.1-16 and 22.1-274.1 of the Code of Virginia, should be amended. The Board will consider consolidating the underlying policy in 8VAC20-720 for efficiency.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

There is a continued need for this regulation. The Department has not received any complaints or comments concerning the regulation. While the regulatory chapter is not overly complex, the regulation overlaps and duplicates federal law in several instances. Chapter 530 has not been revised since it was originally promulgated in 1988. At the time, Chapter 530 defaulted state policy to standards set by the American Society for Testing and Materials. However, as those standards have changed, the Board’s regulations have not been amended to account for updates to federal law.