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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22 VAC 40-680
VAC Chapter title(s)	Virginia Energy Assistance Program – Low Income Home Energy Assistance Program (LIHEAP)
Action title	Establish Year Round Energy Assistance Program and Periodic Review
Date this document prepared	February 16, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Energy Assistance Program (EAP) regulation, 22VAC40-680, provides the framework for a statewide EAP, including the three components of the EAP, which are fuel, crisis, and cooling. This regulation includes the application periods, eligibility criteria, benefits, and administrative costs for each of the three components. This regulatory action will provide a periodic review of 22VAC40-680, including a review of any impact on small business. Additionally, this regulatory action includes changes to extend the eligibility period for EAP, add details regarding the assistance provided, and update the information regarding administrative costs for local departments of social services (LDSS). Other changes will be considered and may be necessary based on public comment received and further review.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

ACF – Administration for Children and Families
DSS – Department of Social Services
EAP – Energy Assistance Program
LDSS – Local departments of social services
LIHEAA – Low-Income Home Energy Assistance Act
LIHEAP – Low-Income Home Energy Assistance Program

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The Virginia EAP is authorized by the Low-Income Home Energy Assistance Act (LIHEAA). This program is funded through a federal block grant and give the states the flexibility to design program components and eligibility requirements within broad parameters established by LIHEAA. While there is no current federal mandate to offer energy assistance year-round, the Administration for Children and Families (ACF) and the Office of Community Services strongly encourage this practice for Low-Income Home Energy Assistance Program (LIHEAP) grantees.

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 and 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.

Section 63.2-217 of the Code of Virginia grants authority to the State Board of Social Services to promulgate rules and regulations necessary to carry out the purpose of Title 63.2, including the operation of assistance programs in Virginia. The EAP administered by the Department of Social Services (DSS) was established in accordance with federal law, specifically the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35) as amended through August 1999. The LIHEAP statute was amended in 2005 by the Energy Policy Act (Public Law 109-58).

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

Almost four years have passed since a periodic review of this regulation was completed; therefore, a periodic review is warranted at this time. Additionally, this regulatory action is essential to protect the health, safety, and welfare of Virginia citizens by allowing for energy assistance services to be made available year-round. One potential issue that will need to be addressed is the fact that the LDSS will

need to employ EAP staff on a year-round basis, instead of a seasonal basis. No additional issues have been identified at this time.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

This regulatory action will make changes to address an extended application period for each component of the EAP, outline services provided by the EAP for each component, and clarify the maximum reimbursement allowable for local administrative expenditures for the implementation of the year-round EAP. Also, a periodic review will take place which could reveal the need for additional changes to the regulation.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no other alternatives to the proposed regulatory action, as a periodic review is required. The Code of Virginia requires that the State Board of Social Services adopt regulations to implement the provisions of the EAP. This regulatory change will provide clarification for the EAP and necessary guidance for the year-round extension of the program. The changes proposed are the least burdensome alternative to meet the purpose of the regulatory change.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

Pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The agency is providing an opportunity for comments on this regulatory action, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to **Denise Surber, Virginia Department of Social Services, 801 East Main Street, 9th floor, Richmond, Virginia, 23219, (804) 726-7386 (phone), 804-726-7358 (fax), denise.t.surber@dss.virginia**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

A panel will not be used.