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Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-685
Regulation title	Virginia Energy Assistance Program – Home Energy Assistance Program
Date	February 17, 2016

This information is required pursuant to Executive Order 17 (2014).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.

Section 63.2-217 of the Code of Virginia grants authority to the State Board of Social Services to promulgate rules and regulations to operate public assistance programs in Virginia. The Home Energy Assistance Program (HEAP) administered by the Department of Social Services (DSS) was established in accordance with § 63.2-805 of the Code.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

Because the language of section § 63.2-805 pertaining to HEAP is detailed and prescriptive, one alternative is to not promulgate a regulation for HEAP and operate the program based on state statute.

This alternative is not feasible, as subsection E of § 63.2-805 makes clear that the receipt of monies into the fund and disbursement of monies from the fund will be directed by State Board regulations. Therefore, regulations specific to HEAP fund disbursements are required. To provide a context for the operation and administration of the HEAP for which funds are disbursed, the regulation includes a definitions section, a program section, and a HEAP fund section. These three sections make clear the purpose of the HEAP and the process and method to disburse funds. It is in the public interest to retain regulations governing the administration of the HEAP in conjunction with the required regulations regarding disbursement of HEAP funds.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No comments were received.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The existing regulation meets the criteria set forth in Executive Order 17 and is necessary for the protection of public health, safety and welfare. HEAP provides funding to augment the Low-Income Home Energy Assistance Program which provides critical heating, cooling, and crisis assistance that ensures the safety, health, and welfare of Virginia’s low-income citizens. The regulation is clear and concise and written in a manner easily understood.

Result

Please state that the reason why the agency is recommending that the regulation should stay in effect without change.

The regulation should stay in effect without change to ensure DSS remains in compliance with § 63.2-805 and that the public is aware of the procedures regarding program administration and fund disbursement for the HEAP.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: 1) the continued need for the regulation; 2) the nature of complaints or comments received concerning the regulation from the public; 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, include a discussion of the basis for the agency’s determination to retain

the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The regulation grants authority to DSS to receive and disburse HEAP funds. These funds are used to supplement the Low-Income Home Energy Assistance Program (LIHEAP) federal funding used to offer and administer the Energy Assistance Program (EAP). In addition, HEAP funds are used to leverage additional federal funds. The DSS did not receive any complaints or comments on the regulation.

Because this regulation makes revenue available to over 600 vendors, the impact of the regulation on small business is positive. The regulation provides eligible EAP vendors, which includes vendors from the small business community, access to revenue made available through the federally funded LIHEAP. The regulation is not complex and does not overlap, duplicate or conflict with other federal or state laws or regulations. The last evaluation of this regulation occurred in 2011. Business entities that provide EAP goods and services are eligible to participate as vendors in the EAP. Payments to vendors are determined by their respective products, self-designated service areas, and by customer selection. There is no need to amend or repeal the regulation to minimize the economic impact on small businesses.