



townhall.virginia.gov

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	22VAC40-680
Regulation title	Virginia Energy Assistance Program – Low Income Home Energy Assistance Program (LIHEAP)
Date	June 11, 2015

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 assistance programs in Virginia. The Energy Assistance Program (EAP) administered by the Department of Social Services (DSS) was established in accordance with the federal Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35) as amended through August 1999. The Low-Income Home Energy Assistance Program (LIHEAP) statute was amended in 2005 by the Energy Policy Act (Public Law 109-58).

The EAP has three components: fuel assistance which covers home heating costs in the winter; crisis assistance which covers the replacement or repair of inoperable heating equipment as well as emergency heating fuel; and cooling assistance which pays for summer cooling needs.

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.

Two alternatives were considered: (i) to not apply for federal LIHEAP funding/not operate the EAP thereby, eliminating the need for a regulation or (ii) to not promulgate a regulation for the EAP and operate the program based on federal statute. Both of these alternatives were rejected for the reasons provided.

Currently, the Commonwealth receives approximately \$80 million annually in federal LIHEAP funding to offer and administer the EAP. Unlike other federally funded programs, there is no state match required to receive LIHEAP funding. To not apply for and accept federal LIHEAP funding would cause the Commonwealth to forego substantial revenue and would be extremely detrimental to low-income households who depend on this assistance to meet their winter heating and summer cooling needs. While there are other entities that offer energy assistance programs, no program is as comprehensive and robust as the EAP.

The federal LIHEAP statute does not require grantees to promulgate state regulations to receive and administer LIHEAP funding. However, the Code of Virginia (Section 63.2-505) requires the State Board of Social Services to promulgate regulations governing the amount of public assistance individuals receive. By definition at § 63.2-100 of the Code, EAP is a public assistance program. Having regulations promulgated through the Administrative Process Act (APA) is particularly important on issues related to eligibility criteria and the determination of benefit levels, both of which can be challenged through the appeals process and court proceedings. Given the current EAP regulations are limited and only address eligibility criteria, benefit levels, application periods and administrative costs for local departments of social services, it is in the public interest to retain regulations governing the administration of the EAP.

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. The three EAP components provide vital assistance to meet recipients' home heating, cooling and repair needs, especially for households with individuals who are or elderly/disabled or young children and could face serious injury or death without the assistance provided. 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 the public is aware of the processes, procedures and eligibility criteria for each of the three EAP components.

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.

Because this regulation makes revenue available to over 600 vendors, the impact of the regulation on small business is positive. There were no complaints or comments received from the public. The regulation provides eligible EAP vendors, which includes vendors from the small business community, access to revenue made available through the federally funded LIHEAP. Vendors, in most cases, receive their funds directly from DSS, so they know they will be paid and the EAP benefits will not be used by the recipient for other purposes. 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. The biennial report to the General Assembly on the effectiveness of the EAP concludes that the program compliments other private and non-profit energy programs and the services are not duplicative. 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.