

Government bills of lading, and responsibility for loss or damage to the goods while in transit passes to the Government at the time the initial carrier accepts a shipment. If the contracting activity fails to furnish a Government bill of lading promptly, such failure shall be considered an excusable delay in delivery.

Dated: October 12, 1999.

**Beverly L. Milkman,**

*Executive Director.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### 45 CFR Part 96

RIN 0991-AA97

#### Block Grant Programs

**AGENCY:** Department of Health and Human Services (HHS).

**ACTION:** Final rule with comment period.

**SUMMARY:** This final rule amends the regulations of the Department of Health and Human Services (HHS) governing the administration of block grant programs. It updates the current regulations to reflect current statutory citations for the block grants. It establishes a requirement for grantees to submit obligation and expenditure reports for all of the block grants. Additionally, this rule establishes submission dates and completion dates for applications for funding from States and territories for Low-Income Home Energy Assistance Program (LIHEAP) and Social Services Block Grant Program (SSBG). It also establishes a completion date for applications for direct funding from Indian tribes and tribal organizations for LIHEAP and clarifies procedures related to the withholding of funds for these programs. In addition, it modifies the requirements for reallocation of funds under LIHEAP. This regulation also includes an amendment to § 96.82, regarding the required submission of reports on households applying for and receiving LIHEAP assistance that is being issued as an interim final rule with opportunity for comment.

**DATES:** *Effective Date:* This final rule and the interim § 96.82 are effective November 15, 1999, except that §§ 96.10(c), 96.10(d) and 96.49, are effective March 1, 2000. The information collection requirements

contained in § 96.30 will take effect upon OMB approval.

**Comment Period:** Comments on § 96.82 will be considered, if received at the appropriate address, as provided below, no later than 5 p.m. on December 14, 1999. We will not consider comments concerning provisions that remain unchanged from the July 17, 1992 or November 16, 1993 proposed rules or that were revised based on public comment.

**ADDRESSES:** Mail written comments on § 96.82 to Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade SW, Washington, DC 20447.

The comments received in response to the requirements in § 96.82 may be inspected or reviewed at the above address, Monday through Friday, between 9 a.m. and 5 p.m., beginning one week after the publication of this rule.

**FOR FURTHER INFORMATION CONTACT:** Mike Herrell, 202/690-5739.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) established seven block grants to be administered by the Department of Health and Human Services (HHS). Subsequent legislation repealed the Primary Care Block Grant. Additional legislation divided the Alcohol and Drug Abuse and Mental Health Services Block Grant into two, resulting in the Community Mental Health Services Block Grant and the Substance Abuse Prevention and Treatment Block Grant. An interim final regulation to implement the block grants was published in the **Federal Register** on October 1, 1981 (46 FR 48582) and the final regulation was issued on July 6, 1982 (47 FR 29472). Subsequent legislation changed certain provisions of the block grants and the regulation was modified several times. The regulation was modified most recently on May 1, 1995 (60 FR 21332) to address requirements for LIHEAP. Based on our experience in administering the block grants, we have identified several aspects of the block grant rules that require, or would benefit from, clarification. Some of those changes were proposed in a notice of proposed rulemaking (NPRM) issued by HHS for block grant programs dated July 17, 1992 (57 FR 31685) and are discussed below.

The Augustus F. Hawkins Human Services Reauthorization Act of 1990, Public Law 101-501, was enacted on November 3, 1990. Title VII of this

public law contains amendments to the Low-Income Home Energy Assistance Act of 1981 (title XXVI of Pub. L. 97-35, as amended), including several changes affecting LIHEAP grantee program administration. An interim final rule published January 16, 1992, in the **Federal Register** (57 FR 1960 *et seq.*) promulgated regulatory changes for several provisions which were effective for fiscal years (FY) 1991 and FY 1992, including a leveraging incentive program. It also indicated that regulations concerning additional changes resulting from Public Law 101-501 would be issued at a later date. A final rule relating to the provisions included in the interim final rule was published on May 1, 1995 (60 FR 21332). An NPRM dated November 16, 1993 (58 FR 60498) proposed additional regulatory changes for provisions included in Public Law 101-501 that were scheduled to become effective in FY 1993 and FY 1994. The later changes concerned "forward funding" and the end of authority to transfer LIHEAP funds to other HHS block grants. Other provisions relating to application submission and completion dates were included in the NPRM. Some of the provisions included in the Department's NPRM of July 17, 1992, were also included in the November 16, 1993 NPRM.

This final rule includes provisions which were originally contained in both the NPRM issued by the Department of Health and Human Services on July 17, 1992 (57 FR 31685) and the NPRM issued on November 16, 1993 (58 FR 60498) concerning LIHEAP, CSBG and SSBG, all of which are administered by the Administration for Children and Families (ACF). It includes a due date for completion of applications for direct funding of Indian tribes and tribal organizations under LIHEAP. Other issues proposed in the NPRM of July 17, 1992 which address LIHEAP, CSBG, and SSBG as well as some of the other block grant programs which are administered by agencies of the Public Health Service (PHS), are also finalized in this rule. It clarifies procedures related to the withholding and reallocation of funds and requires obligation and expenditure reports. Some of those items in the July 17, 1992 NPRM which relate to the block grants that are administered by agencies of the PHS may be addressed in a separate action. Therefore, this final rule excludes the following sections relating to the block grants administered by the PHS contained in the July 1992 NPRM: 96.121, 96.122, 96.123 and 96.124. In addition, this final rule finalizes proposals from the November

16, 1993 NPRM. It establishes submission and completion dates for block grant applications from States and territories for LIHEAP and SSBG. It also codifies the end of transfer authority under LIHEAP. Since the publication of the November 16, 1993 NPRM, legislation changed the forward funding program year for LIHEAP to October 1 through September 30, the same dates as the current Federal fiscal year, but funded one year in advance. The issue of forward funding for LIHEAP is discussed below. Also, this final rule adds new provisions to update the regulation to reflect the current names and statutory citations for the block grants. The NPRM dated November 16, 1993 also included technical changes to § 96.82, concerning a statutorily required report on households assisted under the LIHEAP program. Subsequently, however, the Human Services Amendments of 1994 (Pub. L. 103-252) amended the statutory requirements applying to that report. This amendment includes changes to the existing regulations to reflect implementation of those new requirements, which we are issuing as an interim final rule with opportunity for comment.

Provisions in both the July 17, 1992 NPRM and the November 16, 1993 NPRM included provisions relating to requirements for CSBG. Since the publication of those NPRMs, new legislation has significantly amended certain provisions of the Community Services Block Grant Act. Accordingly, this final rule deletes the following provisions relating to CSBG: Sections 96.49(a), 96.92 and 96.95 of the July 17, 1992 NPRM and §§ 96.10(c)(1), 96.10(d)(1) and 96.49(a) of the November 16, 1993 NPRM.

The NPRM dated July 17, 1992 (57 FR 31682) allowed a comment period of 60 days. Thirteen letters were received in response to that NPRM and are discussed below. The NPRM dated November 16, 1993 allowed a 45-day comment period. Three letters were received in response to that NPRM and are also discussed below.

A final rule to replace the interim final rule of January 16, 1992 on the leveraging incentive program and other issues was published on May 1, 1995 (60 FR 21322). In some cases, provisions from the July 1992 and November 1993 NPRM's were included in that final rule, if they were related to issues already being addressed in that rule. This applies to §§ 96.14, 96.83, 96.84 and 96.87.

### Waiver of Notice and Comment Procedures

The Human Services Amendments of 1994 (Pub. L. 103-252) amended section 2605(c)(1)(G) of the LIHEAP statute regarding data required to be submitted to the Department as part of a grantee's annual application for funds under the LIHEAP program. Section 96.82 of this amendment to the block grant statute, which implements these statutory changes, is being published in interim final form. The Administrative Procedures Act (5 U.S.C. 553(b)(B)) provides that, if the Department for good cause finds that a notice of proposed rulemaking (NPRM) is unnecessary, impracticable, or contrary to public interest, it may dispense with the NPRM if it incorporates a brief statement in the interim final rule of the reasons for doing so.

The Department finds that there is good cause to dispense with an NPRM with respect to proposed changes to § 96.82 of the block grant regulations. First, it is important that grantees have timely notice of the rules for operating their LIHEAP programs consistent with the 1994 statutory provisions. Second, LIHEAP grantees and interested parties were notified by information memorandum of the opportunity to comment on these requirements as part of the Department's request for approval by the Office of Management and Budget of the collection of the information. No objections were submitted to the information collection approval request.

We are interested in receiving formal comments on this interim final rule for § 96.82. We will review any comments which we receive by December 14, 1999. We will revise the rule, as appropriate, based on the comments we receive and our experience in implementing the requirement.

**Forward Funding of LIHEAP.** Sections in the November 16, 1993 NPRM relating to the program year dates are being deleted because of a change in the law. A new section, 2602(c), was added to the LIHEAP statute by Public Law 101-501. This section provided that LIHEAP funds would be available for obligation on the basis of a new "program year" of July 1 through June 30, rather than on the normal Federal fiscal year basis of October 1 to September 30. The law provided that this change from a fiscal year to a program year basis, known as "forward funding", would take place beginning in fiscal year (FY) 1993, and that it would be implemented by appropriating funds in the FY 1993 HHS appropriations law for a nine-month transition period of

October 1, 1992 to June 30, 1993, and also for the new program year of July 1, 1993 to June 30, 1994, a period of 21 months.

The FY 1993 appropriations law for HHS (Pub. L. 102-394) provided funding for the regular Federal fiscal year 1993, which began October 1, 1992 and ended September 30, 1993. It also provided advance funding for FY 1994 to operate the program for a nine-month transition period of October 1, 1993 to June 30, 1994, thus providing partial implementation of forward funding a year later than authorized.

The FY 1994 appropriations law, Public Law 103-112, provided advance FY 1995 funds for the period beginning October 1, 1994. This left a three-month funding gap of July 1 to September 30, 1994. To eliminate that funding gap, an amendment to the Emergency Supplemental Appropriations Act of 1994 (Pub. L. 103-211) made the FY 1994 funds available until September 30, 1994.

The Budget of the United States Government for Fiscal Year 1995 requested funds for the normal Federal fiscal year of October 1, 1994 to September 30, 1995. Subsequently, Title III of the Human Services Amendments of 1994, Public Law 103-252, reauthorized LIHEAP and provided that the program year shall begin on October 1 of the fiscal year following the year in which the appropriation is made. Therefore, the reauthorization law, Public Law 103-252, opted for funding a program year that is on the same time frame as the Federal fiscal year, but funded one year in advance. Consequently, the changes which related to forward funding which were proposed in the NPRM dated November 16, 1993 (58 FR 60498) will not be implemented, since due dates for reports and other actions do not need to be changed to be consistent with the timetable for a new program year. Therefore, the information concerning forward funding and the resultant technical changes contained in that NPRM are deleted from §§ 96.10, 96.42, 96.49, 96.80, 96.81, 96.85 and 96.87. Throughout this current regulation, the dates proposed in the NPRM dated November 16, 1993 (58 FR 60498) for implementation during forward funding are deleted and the dates included are based on the Federal fiscal year.

### Section-by-Section Analysis of Changes in the Regulations

#### Subpart A—Introduction

##### Section 96.1 Scope

Several changes have taken place in the block grants since these regulations

were first issued in 1981. We are amending this section, which specifies which programs are subject to the regulations, to reflect the current names and legal status of the block grants. Although these amendments were not in either the July 17, 1992 or the November 16, 1993 NPRMs, we are including them in the final rule since the changes are only technical in nature and reflect the statutory situation.

Specifically, we are revising paragraph (a) to show that the CSBG program is now covered by sections 671–683 of Public Law 97–35, as amended; deleting reference in paragraph (d) to the Primary Care Block Grant, which was repealed; and amending paragraph (e) to reflect the fact that the Maternal and Child Health Services Block Grant (MCH) program is found at 42 U.S.C. 701–709. We are also deleting reference in paragraph (c) to the Alcohol and Drug Abuse and Mental Health Services Block Grant, which has been repealed and replaced by the Community Mental Health Services Block Grant (CMHS) and the Substance Abuse Prevention and Treatment Block Grant (SAPT). CMHS and SAPT are now referenced in revised paragraphs (c) and (d).

Finally, we are revising paragraph (f) to clarify that these regulations also apply to the Empowerment Zones and Enterprise Communities programs enacted in 1993 as a part of the Social Services Block Grant statute. A question had been raised by eligible entities as to whether the block grant regulations or parts 74 and 92 of Departmental regulations applied to the Empowerment Zones and Enterprise Communities. This amendment will make clear that part 96, the block grant regulations, are applicable. This is consistent with guidance previously issued by the Department.

#### Section 96.2 Definitions

The Trust Territory of the Pacific Islands (TTPI) consisted of Micronesia, the Marshall Islands, and Palau for the first five years of the LIHEAP and CSBG programs. Two of the components of the TTPI, the Marshall Islands and Micronesia, entered into Compacts of Free Association with the United States in 1986, under which they were declared independent nations that will be associated with the United States for defense purposes during a 15-year transition period. Under the terms of those Compacts, allocations to the new Federated States of Micronesia and the Republic of the Marshall Islands under LIHEAP, CSBG, and several other Federal assistance programs were phased out over a three-year period,

beginning in FY 1987. Beginning with FY 1990, they were no longer eligible to receive any LIHEAP or CSBG funding. Palau has also signed a Compact of Free Association, which went into effect at noon on October 1, 1994. As a result, no remaining entity is encompassed by the term, “Trust Territory of the Pacific Islands”. The LIHEAP and CSBG allocations for the new Republic of Palau were also phased out over a three-year period, beginning in FY 1996. The allocation for the Republic of Palau was no more than 75% of its FY 1995 amount in FY 1996, no more than 50% in FY 1997, and no more than 25% in FY 1998. Beginning in FY 1999, no LIHEAP or CSBG funds will be allocated to the Republic of Palau. All three original components of TTPI (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau) continue to receive funding under the block grants administered by agencies of the PHS, since they were exempt from the compacts’ requirements to phase out funding.

To take account of changes in the Trust Territory, the NPRM dated July 17, 1992 (57 FR 31682) proposed to modify the definition of “State” as used in the block grant rule. This final rule will further modify that definition by deleting “the Trust Territory of the Pacific Islands comprised of Palau” since Palau’s Compact of Free Association became effective after the publication of the July 1992 NPRM. We are also adding a statement that, for block grants administered by agencies of the PHS, “States” will include the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

No comments were received in response to § 96.2 of the NPRM. Therefore, the final rule is revised as described above.

#### Subpart B—General Procedures

##### Section 96.10 Prerequisites To Obtain Block Grant Funds

**Form of application.** In general, the block grant regulations provide States and other grantees with substantial discretion in preparing applications and related forms. The current section reads: “No particular form is required for a State’s application or the related submission required by statute.” This language may be misleading, however, inasmuch as some block grant statutes do, in fact, require grantees to submit applications and other information in a particular form in order to ensure that the information is useful for statutorily intended purposes, e.g., Congressional

oversight. Examples are the application requirements for MCH, CMHS and SAPT. The NPRM dated July 17, 1992 (57 FR 31682) proposed to modify subsection (a) to allow the Department to specify the form of an application when this is required or clearly contemplated by the authorizing statute.

**Comments:** Two comments were received in response to the proposal concerning the form of an application. One commenter indicated that the Department was proposing to specify the form of application to be submitted for CSBG funding. The other commenter indicated the fact that adding “except where prescribed elsewhere in this rule” to the current language is not all inclusive, especially since the above example omitted at least one other block grant statute, MCH, which explicitly requires the Secretary to provide a specific “standard form” for the States’ applications. The commenter recommended that the rule be amended either to add this example or to clarify that exceptions include any program where the authorizing legislation specifically requires a particular form.

**Response:** Although the CSBG statute requires the specific content to be included in CSBG applications, no particular format is required. The format by regulation is at the discretion of the grantee.

The Department agrees with the commenter that the above example should include an additional statement that Title V of the MCH statute requires the Secretary to provide a specific “standard form” for the States’ applications. Therefore, section 96.10(a) is amended to include this specific requirement. Furthermore, we have added a clarification to allow specific formats when authorizing legislation requires it.

In support of its commitment to Federalism, the Department will continue to make every effort to develop its application requirements and forms in close cooperation with the States, and where possible, the communities. For example, when developing the MCH application and annual report, the Maternal and Child Health Bureau developed new guidance and an automated reporting system based on the emerging concept of “Performance Partnerships”. Not only did the Bureau meet regularly with a Block Grant Guidance Work Group made up largely of State and local MCH representatives, but the Bureau field tested the guidance and information system with 9 states and held a number of sessions at three separate national meetings with representatives of all State MCH and Children with Special Health Care

Needs Directors, as well as many local directors. The initial national sessions focused on discussing and reviewing the proposed guidance and performance partnership measures. Later sessions included hands on training in using the guidance that was provided by the Bureau and the nine test States.

*Application Submission and Completion Dates for States and Territories For Block Grants.* Due dates for submission and completion of State and territorial applications for LIHEAP, CSBG and SSBG were proposed by the November 16, 1993 NPRM to be added to the block grant regulations so that grant awards can be issued as close as possible to the beginning of a grant period.

The Cash Management Improvement Act of 1990, (CMIA, Pub. L. 101-453) imposes requirements for the timely transfer of funds between a Federal agency and a State and for the exchange of interest where transfers are not made in a timely fashion. The CMIA also requires States to minimize the time between the receipt of Federal funds and their disbursement by the State for program purposes. The CMIA applies to States and territories, but it does not apply to Indian tribes or tribal organizations.

The establishment of application due dates for States and territories will allow the agency sufficient time to process applications and issue awards in a timely manner, in order to minimize interest charges associated with the CMIA. The NPRM issued by the Department on July 17, 1992 (57 FR 31685) also proposed completion dates for tribal applications for the CSBG and LIHEAP. See below under § 96.49 for further discussion of tribal applications.

Because significant changes to the CSBG Act have been enacted since the publication of the NPRMs, we have deleted the provisions relating to CSBG application submission and completion dates from this final rule.

*SSBG:* The November 16, 1993 NPRM also proposed to establish the due date for SSBG applications as one month prior to the beginning of the SSBG State program year. State SSBG allocations are established by a formula based on population. Each fall, individual State allocations for the following Federal fiscal year, based on the projected Congressional appropriation, are published in the **Federal Register**. Unless the appropriation is enacted at a different level, the allocations published in the **Federal Register** the previous fall are the basis for determining the amount of the grant awards for the following fiscal year. For example, FY 1999 allocations were published in the

**Federal Register** in the fall of 1998 for distribution to the States in Federal fiscal year 1999, beginning October 1, 1998. This approach gives the grantee plenty of time to plan its program activities.

For SSBG, accordingly, it was proposed that States and territories which operate on a Federal fiscal year basis submit applications (pre-expenditure reports) for funding by September 1 of the preceding fiscal year. It was also proposed that States and territories which operate their SSBG program on a July 1—June 30 basis submit their applications for funding by June 1 of the preceding funding period. For example, for States and territories which operate on the basis of the fiscal year which begins on October 1, 2000, and ends on September 30, 2001, the date of submission for applications would be September 1, 2000. For SSBG programs with a funding period which begins on July 1, 2000, and ends on June 30, 2001, the date of submission would be June 1, 2000. No date was proposed for completion of SSBG applications.

No comments were received in response to the proposal for submission dates for the SSBG program. Thus, the provision is adopted as proposed, with two exceptions. We have added the authority to allow the Department to agree to a later application submission date, in order to allow for unusual circumstances that may make meeting these deadlines difficult or impossible. In addition, we have changed the term "Secretary" used in the NPRM to "Department", to better reflect actual working relationships.

Therefore, the date for submission of SSBG applications is September 1 of the preceding fiscal year for those States which operate on a Federal fiscal year basis unless the Department agrees to a later date. The date for submission of applications for those States which operate on a July 1—June 30 basis is the preceding June 1 unless the Department agrees to a later date. States requesting a later submission date should provide proper documentation to the Department.

*LIHEAP:* For LIHEAP, it was proposed in the NPRM dated November 16, 1993 (58 FR 60498) that the submission date for applications be established as one month before the beginning of the new "program year" of July 1 to June 30. Thus, the due date for submission of the applications would be June 1, if forward funding were implemented.

Also in the NPRM, for LIHEAP, the final date for completion of applications from States and territories was proposed to be established as December 31 of the program year for which they were

requesting funds, almost seven months after the due date for the submission of the applications.

*Comment:* One comment was received in response to the proposed LIHEAP submission dates and completion dates for States and territories. The commenter was in favor of the proposed LIHEAP submission date but did not think the completion date should be more than 60 days after submittal. The commenter expressed the belief that the Department was attempting to circumvent the requirements under the Cash Management Improvement Act (CMIA) and that grantees should receive a grant award notification before October 1 or December 31 of the program year.

*Response:* The Department disagrees with the assertion that we are trying to circumvent the requirements under the CMIA. If States submit their applications earlier, the Department will review them as soon as possible. Departmental review will be delayed only if the grantee fails to submit all the information required. The December 31 completion date requirement was proposed in order to give grantees the time to submit the required information, not to give the Department more time to review it.

It is the conclusion of the Department that since LIHEAP will continue to be operated on a normal fiscal year basis of October 1 to September 30, with funding scheduled to be appropriated one year in advance, the due date for submission of funding applications from States and territories will be established as September 1, one month prior to the beginning of the fiscal year, unless the Department agrees to a later date. We believe it is appropriate to require submission of the funding application prior to the start of the funding period, since the grantees will have been advised of the amount of their allocations (they should know the level or amount) one year in advance and thus will have had sufficient time for planning and to hold the required public hearings. The submission date of September 1 is also consistent with the submission date for applications for tribal grantees.

The Department agrees with the commenter that a period of almost seven months is not needed for review of the applications. However, based on past experience, since numerous applications from both States and tribes will be received at the same time, sixty days may not be sufficient time for the completion of reviews, notification of grantees concerning deficiencies in applications, and receipt of the grantees' responses. Therefore, as a compromise,

the due date for the completion of all information required by States and territories is being established as December 15 of the fiscal year for which they are requesting funds, 3½ months after the due date for the submission of the applications. For example, for fiscal year 2000, which begins on October 1, 1999 and ends on September 30, 2000, applications must be submitted by September 1, 1999 and must be completed by December 15, 1999, unless the Department agrees to a later date after proper documentation from the State.

As with the SSBG program, we have added the authority to allow the Department to agree to a later application submission or completion date, in order to allow for unusual circumstances that may make meeting these deadlines difficult or impossible, and we have changed the term "Secretary" to "Department".

**Effective Date:** Given the timing of publication of this final rule, there will not be time for grantees to meet the new schedule for submission and completion of FY 2000 SSBG and LIHEAP applications, which will be due on September 1 (or June 1 for some SSBG applications) of each year. Accordingly, §§ 96.10(c) (1) and (2) and 96.10(d) of this rule, relating to the submission deadlines for SSBG applications and the submission and completion deadlines for LIHEAP applications, will become effective on March 1, 2000, and will apply beginning with FY 2001 plans for SSBG and LIHEAP. Under these provisions, for example, SSBG applications for FY 2001 must be submitted by September 1, 2000 for States that operate their programs on a federal fiscal year basis, and by June 1, 2000 for States that operate on a July 1–June 30 program year basis. LIHEAP applications for FY 2001 must be submitted by September 1, 2000 and must be completed by December 15, 2000.

#### *Section 96.15 Waivers*

The LIHEAP statute provides that grantees may request waivers of the limit on the amount of funds that may be spent on weatherization activities and other energy-related home repairs and of certain crisis assistance performance standards.

The LIHEAP statute provides that, in general, not more than 15 percent of funds allotted to or available to a grantee for any fiscal year may be used for weatherization activities and other energy-related home repairs. Section 705 of Public Law 101–501 (42 U.S.C. 8624(k)) amended section 2605(k) of the LIHEAP statute to allow the

Department, under certain circumstances, to grant a waiver to increase the maximum amount of LIHEAP funds a grantee may use for low cost weatherization or other energy-related home repairs from 15 percent to up to 25 percent of the funds allotted or available to the grantee.

Section 2604(c) of the LIHEAP statute provides that a "reasonable amount" of LIHEAP funds (based on data from prior years) shall be reserved until March 15 of each year by each grantee for energy crisis intervention. This section describes performance standards for time frames for the provision of assistance, in addition to performance standards for geographical accessibility and obtaining applications from individuals who are physically infirm. However, the statute provides for a waiver of the performance standards for a program in a geographical area affected by a natural disaster designated by the Secretary or affected by a major disaster or emergency designated by the President for as long as the designation remains in effect, when the emergency makes compliance with the standards impracticable. Detailed criteria for a waiver of the crisis assistance performance standards are described in 45 CFR, part 96, § 96.89.

Currently, no mention is made in § 96.15 of the regulations to indicate to whom applications for waivers that are permitted by statute should be submitted for the LIHEAP program. Current regulation requires that waivers under the CSBG program are to be submitted to the Director, Office of Community Services. It was proposed in the NPRM dated November 16, 1993 (58 FR 60498) that waiver applications for SSBG (formerly submitted to the defunct Office of Human Development Services) and for LIHEAP should also be submitted to the Director, Office of Community Services. This section also currently specifies that applications for waivers for block grants administered by agencies of the PHS should be submitted to the Assistant Secretary of Health. With the reorganization of the Office of the Assistant Secretary for Health in 1995, this responsibility was delegated to the cognizant Agencies of the PHS. Accordingly, this section has been revised to specify that waiver requests should be submitted to the Director of the Centers for Disease Control and Prevention for PHS, to the Administrator of the Substance Abuse and Mental Health Services Administration for CMHS and SAPT, and to the Director of the Maternal and Child Health Bureau for MCH. The new titles of the CMHS and SAPT block grants are also reflected in this section.

No comments were received in response to § 96.15 of the NPRM. Therefore, this rule is adopted as proposed, with the changes discussed above for the titles and waiver approving authorities for the block grants administered by agencies of the PHS.

#### *Subpart C—Financial Management*

##### *Section 96.30 Fiscal and Administrative Requirements*

The NPRM issued by the Department dated July 17, 1992 proposed to add a new paragraph that would require block grant recipients to submit information on the obligation and expenditure status of each block grant allocation. For block grants whose statutory authorizations include time limits on both obligation and expenditure of funds, this information would include: (1) The dollar amount of the funds obligated by the grantee and the date of the last obligation; and (2) the dollar amount of the funds expended by the grantee and the date of the last expenditure.

For block grant statutes which have time limits on the obligation of funds but not on the expenditure of funds, this information would include the dollar amount of the funds obligated during the period funds were available for obligation and the date of the last obligation.

For block grant statutes which have time limits only on the expenditure of funds, this information would include the dollar amount of the funds expended and the date of the last expenditure.

The information would be required for each block grant award allocation after the close of the statutory period(s) for obligation of funds and/or expenditure of funds.

As proposed in the NPRM, grantees would be required to answer an inquiry issued to the grantee by the Department's Office of Payment Management Systems. This letter would be sent at the end of the statutory period for obligation or expenditure of funds. Grantees would have 90 days after the end of the applicable statutory period (or 90 days after receipt of the letter, whichever is the later date) to return the letter with the required information.

This information would allow HHS and the grantee to verify the financial status of block grant funds and allow the Department to determine aggregate obligations, expenditures, and available balances. The reporting requirement would not affect a grantee's right to subsequent reimbursement or to draw down funds for authorized obligations or expenditures made within the allowable statutory periods.

*Comments:* Three commenters wrote in response to this section of the NPRM. One commenter indicated that, although submission of a letter to the Department at the end of the year on the expenditure of CSBG funds would not be a significant burden, it seemed to be a duplication of information which the States provide in the expenditure reports submitted at the end of the year. The commenter continued by stating that it would have no adverse impact for this report to be submitted concerning LIHEAP expenditures.

The second commenter wrote that the imposition of new reporting requirements is contrary to the original intent of the block grant legislation that sought to minimize Federal administrative requirements by placing greater reliance on State government. The writer stated that the current block grant reporting requirements are adequate and should not be changed.

The final commenter asserted that the CSBG Act is administered exclusively by subgrantees, and the proposed section does not make it clear what requirements would be placed on subgrantees to report to a State in order for the State to be able to file the information the new section will require. The commenter stated the hope that any requirements placed on subgrantees to provide information to the State would conform to the system HHS now imposes on its direct grantees to file various financial reports.

*Response:* Currently, the Department does not require obligation or expenditure reports for the block grants (although some grantees submit them voluntarily.) This has caused problems in the past because there is no clear-cut information as to when a grantee has completely used its grant funds, thus allowing the Department to close the grant account. Public Law 101-510 (signed into law on November 5, 1990) amended 31 U.S.C. Chapter 15 to provide that, by the end of the fifth fiscal year after the fiscal year in which the Federal government obligated the funds, the account will be canceled. If valid charges to a canceled account are presented after cancellation, they may be honored only by charging them to a current appropriation account, not to exceed an amount equal to 1 percent of the total appropriations of that account.

Because of our need to determine the status of grant accounts, we have determined that it is appropriate to require an annual report on obligations and/or expenditures from all grantees under the block grant programs. We do not believe this requirement would be a significant burden on block grant recipients, as they are already required

to maintain this information under current requirements of section 96.30. This section of the block grant regulations currently states that recipients are to maintain information sufficient to: “\* \* \* (b) permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of the statute authorizing the block grant.” Furthermore, the Department now periodically sends grantees letters indicating the status of their block grant funds and asks grantees to confirm this information. However, since the publication of the July 17, 1992 NPRM, the Department considered designating the use of OMB Standard Form 269A, Financial Status Report (short form), to collect this information because it would be less burdensome on the grantees and the Department. The first comment reinforced this thought. By using Form 269A, grantees would be submitting the information on a familiar form and in a familiar format.

At least 90% of the CSBG funds are administered by subgrantees. It continues to be the policy of the Department to defer to the State for the type and frequency of reporting requirements a State mandates of subgrantees, so long as the reporting requirements are reasonable and provide the necessary information the State needs to comply with Federal regulations.

The Amendments enacted in 1998 (section 678D of Pub. L. 105-285) mandate that for CSBG grantees, “a State shall ensure that cost and accounting standards of the Office of Management and Budget (OMB) apply to a recipient of funds under this subtitle.” These standards are reflected in OMB Circulars A-110 and A-122.

Therefore, § 96.30 is adopted, with several changes from the version proposed in the NPRM, in order to make the requirement more consistent with other programs and thus reduce the burden on grantees. Rather than have a letter of inquiry sent to grantees at the end of the applicable statutory grant period, the final rule establishes a requirement that grantees submit, within 90 days of the end of the grant period, OMB Standard Form 269A, Financial Status Report (short form). This will allow grantees to submit the required information without a need to wait for a request from the Department, using a form with which they are familiar because it is used for most other Departmental grant programs. In addition, we have made modifications to change the term “recipient” to “grantee”. These are technical changes

to use a more accurate term, since “recipients” are often considered to be individual beneficiaries.

#### *Subpart D—Direct Funding of Indian Tribes and Tribal Organizations*

##### *Section 96.41 General Determination*

Each of the block grant statutes provides direct funding for States and territories. Statutes for four block grants—LIHEAP, CSBG, PHHS, and SAPT—authorize the Secretary to fund certain Indian tribes and tribal organizations directly if the Secretary determines that tribal members would be better served by the tribe than by the State(s) in which the tribe is located. In the case of SAPT, this authority is limited by statute to tribes that were funded in FY 1991 under the Alcohol and Drug Abuse and Mental Health Services Block Grant, the predecessor to SAPT and CMHS. Under this statutory provision, only one tribe qualifies for direct funding under SAPT. By law, Indian tribes may not apply for direct funding under MCH, CMHS, or SSBG.

Section 96.41(a) provides that the Department will award block grant funds directly to an eligible Indian tribe or tribal organization upon receipt of a complete application for funds that meets the statutory requirements. The preamble to the original block grant final rule dated July 6, 1982 (47 FR 29480) states the Department’s policy on direct funding of Indian tribes as follows: “By regulation, the Secretary has determined that members of Indian tribes and tribal organizations would be better served by direct Federal funding than by funding through the States in every instance that the Indian tribe or tribal organization requests direct funding.”

This language reflects our view that, as a general rule, tribal rather than State priorities and program administration will result in better service to tribal members. The final rule published in July 1982 established the primacy of the Indian tribe in determining the services to be provided and how best to provide them. It avoided the need for a Departmental assessment of the relative efficiency and effectiveness of alternative services systems, lodged primary responsibility with the tribe for administering the programs, and established the tribe’s accountability for providing appropriate services to its service population.

The NPRM dated July 17, 1992 (57 FR 31682) proposed to add a paragraph (c) to the existing rule to clarify that under limited circumstances, the Secretary may use his or her discretionary authority to determine that the members

of a particular Indian tribe eligible for block grant funds would be better served by the State in which the tribe is located. The proposed amendment included in the NPRM would clarify the block grant regulations and apply only to the circumstances specified in paragraph (c):

(1) The Department has determined that the tribe has not used its block grant funds substantially in accordance with the block grant statute; and

(2) The Department has withheld block grant funds from the tribe based on that determination and in accordance with procedures established by the block grant regulations; and

(3) The tribe has not provided sufficient evidence that it has taken action to correct the problems leading to the withholding of funds.

The Secretary's determination to award funds to the State rather than directly to the tribe would be limited to the situation described above. If a tribe is located in more than one State, funds that had been set aside for a direct grant to the tribe would be awarded to these States in the same proportion as they were offset from the States' allotments for direct award to the tribe. When the Department withholds block grant funds from a tribe, the Department would make the determination to award funds to the State only after allowing as much time as it determines to be reasonable for the tribe to correct the conditions that led to withholding, consistent with provision of timely and meaningful services to the tribe's service population during the fiscal year. For example, if LIHEAP funds were withheld from a tribe effective October 1, the first day of the Federal fiscal year, but funds were not yet available to the Department for distribution to grantees, the Department probably would allow additional time for the tribe to correct these conditions. However, if LIHEAP funds were withheld later in the fiscal year, for example, effective as late as December 1, during the winter heating season, and funds were then available to the Department for distribution to grantees, the Department probably would make the determination to award funds to the State at the same time that it took the official withholding action, in order to ensure that tribal members received needed services during the winter months.

To assure that well-planned, uninterrupted, and timely services are provided to the service population of a tribe from which funds are withheld, the proposed amendment provided that the State would receive all remaining funds reserved for the tribe for that fiscal year and all funds for subsequent

fiscal years until the Secretary determines that the tribe has corrected the problems which resulted in the withholding. Where funds have been withheld and the tribe has not taken satisfactory corrective action by the first day of the following fiscal year, all of the funds to serve the tribe's service population for the following fiscal year would be awarded to the State. The State would then be responsible for serving the tribe's service population.

If the tribe takes satisfactory corrective action during the following fiscal year, the tribe may receive direct funding for that fiscal year with the concurrence of the State. This is consistent with 45 CFR 96.42(e), which provides for acceptance of a tribal application submitted after September 1 only with the concurrence of the State(s) in which the tribe is located. For example, if the State had provided LIHEAP services for a fiscal year to the tribe's service population before the tribe took corrective action, the State would be unlikely to concur in the acceptance of an application from the tribe for that fiscal year.

The July 17, 1992 NPRM (57 FR 31682) was intended to clarify the responsibility for serving these tribal households and assure that services would be provided in a timely manner. The NPRM was intended to provide clear, published notice so that all parties concerned—including the tribe or tribal organization, the tribe's service population and the State—would understand the actions that the Department would take and understand the State's responsibility to serve the tribal service population while funds are withheld from the tribe or tribal organization.

The preamble to the original block grant final rule affirms the Department's commitment to continue the government-to-government relationship between the United States and Indian tribes and affirms the policy of self-determination for tribes. The Department continues to be committed to these policies; it is neither the intent nor the effect of the clarification in this final rule to change them.

The Department will withhold block grant funds from a grantee only after determining, in accordance with the due process procedures specified in the block grant statutes and regulations, that the grantee is not using its block grant funds substantially in accordance with statutory requirements to which the grantee has agreed. In such a case, the grantee has violated its agreement to abide by the terms and conditions of the grant, and the Department must act, in

accordance with the law, to assure accountability for public funds.

The NPRM dated July 17, 1992 (57 FR 31682) also proposed to amend paragraph (a) to clarify that paragraph (c) constitutes a limited exception to the principle of direct funding of Indian tribes and tribal organizations. The proposed rule would apply when funds are withheld from a tribal organization, as well as from a tribe. (A tribe that was to be served by a separate tribal organization from which funds are withheld may rescind its resolution authorizing that role for the tribal organization and, consistent with statutory and regulatory requirements including § 96.42(e), may request direct funding for itself—on its own—or through another tribal organization. Because the tribal organization would be the grantee from which funds are withheld, a tribe separate from the tribal organization would be eligible for its own funding).

We anticipate there would be very few instances in which the exception to the Department's policy on direct tribal funding would apply. Over the past 15 or 16 years of HHS administration of the block grants with direct tribal funding—with over 100 tribes and tribal organizations receiving direct funding each year—there has been only one instance in which the Department has withheld block grant funds from a tribe. The NPRM was consistent with the actions previously taken by the Department.

*Comments:* Two comments were received in response to § 96.41 of the NPRM. One commenter (a tribe) stated that the proposed rule would impact tribal self-determination and begin to close the existing policy that in most Federal programs, tribes are treated as equals with the States.

*Response:* We believe that the rule would reaffirm HHS policy to directly fund tribes whenever it is authorized by a block grant statute, so long as the tribes submit the applications required by the statute and administer the block grant funds substantially in accordance with the statute. The Department's intent of the new language is to provide a means of continuing services to tribal populations if tribal management of block grant funds is found to be substantially out of compliance with statutory requirements to which the tribe agreed when it applied for and accepted Federal funds, and the tribe does not take corrective action during the period of a grant. In essence, we are seeking a way to continue services uninterrupted when we have no viable tribal alternative available. This has happened only once in the history of the



block grants, and we do not anticipate that this procedure would be used in the future until all reasonable efforts at assisting a tribe or tribal organization to come into compliance would be exhausted.

*Comment:* The second commenter (a State) objected to having the State be the alternative for providing services when funds are withheld from a tribe located within that State; the commenter mistakenly believed that the State would not have access to the withheld funds. The commenter proposed that HHS assume the responsibility to serve such a tribe.

*Response:* HHS has neither the authority nor the capacity to provide direct block grant services; the State does. Also, the proposed rule and its preamble specified that the State would receive any funds withheld from a tribe, if the tribe did not correct the problems that led to withholding within a reasonable period, so that the State could then serve the tribe's service population until the tribe corrected these problems. The State would serve this tribe's service population as it serves its other residents, including the service populations of tribes within the State that do not apply for direct Federal funding. There is no requirement that the State provide more specialized treatment or accessibility to members of this tribe than it does to its other residents.

Therefore, the rule is adopted as proposed, with a technical modification to change the term "Secretary" to "Department".

#### *Section 96.42 General Procedures and Requirements*

Paragraph (f) of subpart D, § 96.42 of the block grant regulations, provides that a State receiving block grant funds is not required to use those funds to provide tangible benefits (e.g., cash or goods) to American Indians who are within the service population of an Indian tribe or tribal organization that received direct funding from the Department under the same block grant program for the same fiscal year. A State, however, may not deny tribal members access to intangible services funded by block grant programs (e.g., treatment at a community health center) even if they are members of an organization receiving direct funding for a similar service.

The original preamble to the regulations (July 6, 1982, 47 FR 29482) provides the following clarification of this provision:

"Thus, for example, States are not required to provide cash payments or weatherization assistance to Indians

included in the service population of a tribe receiving funds under the low-income home energy assistance program."

The proposed amendment in the July 17, 1992 NPRM clarified that tribes receiving direct block grant funding are not required to use those funds to provide tangible benefits to non-Indians residing within the tribe's service area, unless a written tribe-State agreement so provides. In the case of tangible benefits such as those provided under the LIHEAP block grant, where the service unit is the household, the clarification would apply to non-Indian households.

The justification for this policy is clear. The LIHEAP statute authorizes the direct funding of Indian tribes for the provision of benefits to Indian households. The statute specifies that a tribe with a reservation is eligible to receive LIHEAP funds based on the number of Indian households eligible for the program and residing on the tribe's reservation or adjacent trust land, as a proportion of the eligible households in the State, or a larger amount based on an agreement between the tribe and its State. The tribe's allotment is to be offset from the allotment of the State. Unless a tribe-State agreement provides otherwise, the tribe's LIHEAP allotment is not based on the total eligible population of its reservation and nearby trust land. The tribe does not receive LIHEAP funds to serve non-Indian households residing in these areas. This is the responsibility of the State. Similarly, the statute provides that a tribe without a reservation is to receive LIHEAP funds based on the number of Indian households eligible for the program in its service population area, as determined by the Secretary in consultation with the tribe and its State.

Thus, unless a tribe-State agreement provides otherwise, tribes receive LIHEAP funds based only on the number of eligible Indian households in their service areas.

This amendment, therefore, would clarify that States have the responsibility to serve the non-Indian households residing in the service area of a direct grant tribe, unless the tribe and the State agree that the tribe will do so.

No comments were received in response to § 96.42 (f) as proposed in the NPRM. Therefore, the rule is adopted as proposed.

#### *Section 96.49 Due Date for Receipt of All Information Required for Completion of Tribal Applications for the Low-Income Home Energy Assistance Block Grants*

Section 96.49 was proposed to be added to the block grant regulations by the NPRM issued by the Department on July 17, 1992 (57 FR 31685). It proposed to establish completion dates for tribal applications for CSBG and for LIHEAP. Because significant changes to the CSBG statute have been enacted since the publication of the NPRM, we are dropping the provision establishing completion dates for tribal applications for CSBG.

*LIHEAP:* Section 96.49 of the NPRM dated July 17, 1992 proposed that once the LIHEAP tribal applications are received by the Department, additional information needed to complete the applications must be received no later than January 31 for a given fiscal year. The July 17, 1992 proposed rule also indicated that after January 31, funds would revert to the State(s) in which the tribe is located. This provision was also included in the November 16, 1993 NPRM (58 FR 60498) in an amended version. The later NPRM included a due date for completion of tribal applications of October 1, once forward funding went into effect.

*Comments:* In response to this part of § 96.49 of the July 17, 1992 NPRM, three comments were received. A commenter from a northern State indicated that the deadline should provide States with sufficient notice in case they need to provide LIHEAP assistance to the service population of a tribe that has not completed its application for a direct grant. Additionally, the commenter stated that the State's extremely cold weather necessitates that winter heating assistance begin by November 1. Thus, it felt that the January 31 deadline was too late, and suggested October 15 instead.

One commenter indicated that the requirement that tribal applications be completed by January 31 or the State becomes responsible to serve the tribe would result in funds being allocated to the State after February. The commenter was concerned that, in addition to the financial impact on the State, the State would not have sufficient lead time to plan, staff and implement its program to serve the tribe.

Another commenter indicated that the current regulatory due date of September 1 for submission of a tribal application for both CSBG and LIHEAP is satisfactory. The commenter was uncertain whether the due date for completion of the tribal applications is



necessary. The commenter also expressed the need to receive LIHEAP funding as early in the fiscal year as possible.

No comments were received in response to the LIHEAP completion date proposed in § 96.49 of the November 16, 1993 NPRM related to forward funding. As mentioned earlier, the proposed dates related to forward funding are being deleted because forward funding will not be implemented. However, that NPRM proposed a completion date five months after the submission date.

**Response:** The Department concludes, upon further review, that such a lengthy period for completion of the applications should not be needed. Because most LIHEAP funds are spent for winter heating assistance, it would be preferable that States know by early winter at the latest whether they will be required to serve a tribe's service population. It should be mentioned that most tribes submit all the information necessary to complete their applications in a timely manner. However, in a few cases, tribes take many months to complete their applications, or never complete their applications, despite repeated communication from HHS about missing items.

Under this final rule, the due date for receipt of all information necessary to complete LIHEAP tribal applications is December 15 unless the State(s) in which the tribe is located agrees to a later completion date. This is the same date set for completion of applications from States and territories. We believe it balances the need to give tribes a reasonable amount of time to provide all necessary information to complete their applications with the need of the States to know as early as possible whether they will be responsible for serving tribal members. We have also made explicit that when funds revert to the State because a tribe's application is not completed by the deadline, the State is responsible for serving that tribe's members.

**Effective Date:** Given the timing of publication of this final rule, there will not be time for tribal grantees to meet the new schedule for completion of FY 2000 applications for LIHEAP. Accordingly, § 96.49 of this rule, which applies to LIHEAP applications, will become effective on March 1, 2000 and will apply beginning with FY 2001 plans. For example, for FY 2001, LIHEAP tribal applications must be submitted by September 1, 2000 and must be completed by December 15, 2000.

#### *Subpart E—Enforcement*

##### *Section 96.53 Length of Withholding*

Six of the seven block grant statutes provide for withholding of funds from grantees under certain circumstances. (SSBG has no provision for withholding of funds.)

The statutes for PHHS, CMHS, and SAPT provide that the Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not use its allotment in accordance with the requirements of the statute or the certification provided under the statute. The Secretary shall withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

The statute for MCH provides that the Secretary may, after notice and opportunity for a hearing, withhold payment of funds to any State which is not using its allotment under this title in accordance with this title. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

The LIHEAP and CSBG statutes provide that the Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not utilize its allotment substantially in accordance with the provisions of this statute and the assurances such State provided under the statute.

Section 96.53 was proposed in the NPRM issued by the Department on July 17, 1992 (57 FR 31685). It clarifies that under LIHEAP and CSBG, the Secretary may withhold funds until the Secretary finds that the reason for withholding has been removed, as is the case with the other block grants which provide for the withholding of funds. It proposed making explicit authority which is implicit in the LIHEAP and CSBG statutes. The proposed new language is similar to that of the other four statutes which provide for withholding of funds.

**Comment:** In response to § 96.53 in the NPRM dated July 17, 1992, one comment was received. The commenter indicated agreement with the proposed language, both because it is very similar to language in several other block grant statutes and because it provides a time frame for when the funds would be released once they have been withheld.

**Response:** The Department concludes that for the sake of thoroughness and consistency with the other block grants,

the proposed language is needed to clarify for grantees authority which is implicit in the LIHEAP and CSBG statutes. Therefore, the language proposed for § 96.53 is included in this final rule.

#### *Subpart H—Low-Income Home Energy Assistance Program (LIHEAP)*

##### *Section 96.81 Carryover and Reallotment*

Section 2607(b)(2) of the LIHEAP statute provides that grantees may hold available (carry forward or carry over) for use or obligation in the following fiscal year up to 10 percent of the amount payable to them in a fiscal year and not transferred to another HHS block grant. Section 2607(b)(1) provides for reallotment among all grantees in the following fiscal year of any amounts unused (unobligated) as of the end of a fiscal year that exceed the amount that may be held available for use in the following fiscal year. Section 2604(f)(2) of the LIHEAP statute, as amended by Public Law 101-501, provides that, beginning in FY 1994, grantees may no longer transfer LIHEAP funds to other HHS block grants.

##### *—Required Carryover and Reallotment Report*

As part of the reallotment procedure established by section 2607(b), LIHEAP grantees must report information annually on funds they plan to hold available for obligation in the following fiscal year and on excess unobligated funds available for reallotment among all grantees in the following fiscal year. Section 96.81 of the block grant regulations lists the requirements for these reports.

The January 16, 1992 (57 FR 1960) interim final rule amended § 96.81 to reflect the change made by Public Law 101-501 reducing the maximum amount of LIHEAP funds that grantees may carry forward for obligation in the succeeding fiscal year, from 15 percent to 10 percent of the funds payable to the grantee and not transferred, pursuant to section 2604(f) of the LIHEAP statute (as in effect prior to 1998), to another HHS block grant. The change was effective beginning with FY 1991 funds carried over to FY 1992. The amended § 96.81 required that, as part of their annual carryover and reallotment reports, grantees indicate the amount of LIHEAP funds they want to hold available for obligation in the next fiscal year, "not to exceed 10 percent of the funds payable to the grantee and not transferred \* \* \*"

The November 16, 1993 (58 FR 60498) NPRM proposed to specify in § 96.81

that, beginning with funds appropriated for FY 1994, grantees would not be able to transfer any LIHEAP funds to another block grant, consistent with changes to the LIHEAP statute made by Public Law 101-501. We received no comments on this proposed amendment.

Because the transfer authority has now expired, this final rule deletes reference to it in the list of requirements for grantees' future carryover and reallocation reports in § 96.81. It codifies the requirements for these reports at § 96.81(b).

Title III of the Human Services Amendments of 1994, Public Law 103-252, reauthorized LIHEAP and provided that the Department may not release block grant funds to a grantee until its carryover and reallocation report, which is due by August 1 of each year, has been submitted for the previous year. This requirement was effective beginning with fiscal year 1995 and has been added to this section.

#### —Conditions for Reallocation

In addition, we are making final a change relating to reallocation of LIHEAP funds that we proposed in the July 17, 1992 (57 FR 31682) NPRM.

The preamble to the NPRM noted that when grantees have had excess unobligated funds available for reallocation, these amounts have usually been small. For example, in FY 1987, a total of \$16,706 in unobligated FY 1986 LIHEAP funds were available for reallocation; in FY 1988, \$2,858 in unobligated FY 1987 funds were available for reallocation; and in FY 1994, a total of \$23,591 in unobligated FY 1993 funds were available for reallocation. If HHS had reallocated these funds, many grantees would have received grant awards of less than \$1, and many others would have received awards of less than \$25. We therefore determined that it would not be cost effective for HHS to award these small amounts to grantees, or for grantees to account for and use them. HHS then published notices in the **Federal Register** announcing its decision that no LIHEAP funds from FY 1986, FY 1987, or FY 1993 would be reallocated.

Because similar situations are likely to occur in the future, the NPRM proposed to amend § 96.81 of the block grant regulations to state that HHS will not reallocate LIHEAP funds if less than \$25,000 is available. If \$25,000 or more is available, HHS would reallocate these funds. However, HHS would not award less than \$25 in reallocated funds to a grantee. If \$25,000 were available for reallocation, all States would receive at least \$25.

The NPRM's preamble proposed that if a tribe's share of reallocated funds would be less than \$25, the tribe's share would be awarded to the State(s) in which the tribe is located. If a territory's share of reallocated funds would be less than \$25, the territory's share would be distributed proportionately among the other territorial grantees receiving shares of \$25 or more.

We received one comment supporting this proposed amendment and none opposing it.

We are adopting this change at section 96.81(c), as proposed in the July 17, 1992 NPRM. If a tribe, tribal organization, or territory's share of reallocated funds would be less than \$25, HHS will follow the procedures for such circumstances that are described above.

#### —Technical Amendments

We also are clarifying that § 96.81 applies to regular LIHEAP block grant funds and not to LIHEAP leveraging incentive funds. (Section 96.87(k) of the regulations as established by the final rule of May 1, 1995, sets the period of obligation for leveraging incentive funds. Leveraging incentive funds are not subject to reallocation; all leveraging incentive funds not obligated during the appropriate period allowed for obligation must be returned to the Federal government.)

Finally, in minor technical amendments, we are dividing § 96.81 into paragraphs "(a) Scope", "(b) Required carryover and reallocation report", and "(c) Conditions for reallocation", as proposed in the July 1992 NPRM. Also, we are changing the heading of the section from "Reallocation report" to "Carryover and reallocation", and making several other minor technical changes, to accurately reflect the contents of the LIHEAP statute and this section.

#### *Section 96.82 Required Report on Households Assisted*

The title of § 96.82 was proposed to be revised in the November 16, 1993 NPRM (58 FR 60498) from "Required report" to "Required report on households assisted" to reflect the contents of the report. In addition, the NPRM included provisions related to the implementation of forward funding, and proposed changing the term "handicapped" to "disabled". No comments were received in response to this section of the NPRM.

Subsequently, however, the Human Services Amendments of 1994 (Pub. L. 103-252) amended section 2605(c)(1)(G) of the LIHEAP statute to provide that, beginning with fiscal year 1995, additional data must be reported by

grantees concerning the households applying for assistance, as well as those households receiving assistance under the LIHEAP program. Pub. L. 103-252 also required that the data for the prior year must be submitted as part of the application for grant funds.

Accordingly, grant awards for the current fiscal year may not be made until the data for the prior year is received.

The Office of Management and Budget has approved the collection of the new data requirements (LIHEAP Household Report—OMB Control No. 0970-0060, expiration date 6/30/2000), beginning with data for FY 1998, which must be submitted as part of the application for FY 1999 LIHEAP funds. As required by the statute and approved by OMB, the data that must be reported for each type of LIHEAP assistance provided by the grantee is (1) the number and income levels of those households applying for assistance and of those households receiving assistance; and (2) for those households receiving assistance, the number of households that contain one or more members who are elderly, disabled, or a young child. In addition, OMB approved the collection of data on a voluntary basis on the breakout of young children into two age categories, as recommended in the legislative history for the law. As part of the OMB clearance, insular areas that receive regular LIHEAP block grant allocations of less than \$200,000 annually and Indian tribes and tribal organizations that receive direct funding from HHS need to submit only data on the number of households assisted for each type of LIHEAP assistance provided by the grantee. The OMB approval included a recommended format that grantees may (but are not required) to use to report the data.

Consistent with the amendments to the LIHEAP statute, the OMB information collection approval provides that a grant award will not be made until the LIHEAP Household Report for the previous fiscal year is received.

We are adopting this section of the regulation, with several changes to reflect the change in statutory requirements and the OMB information collection approval. We have revised this section to require grantees to submit a report on data required by the LIHEAP statute, as approved by OMB for information collection under the Paperwork Reduction Act of 1995. Rather than specify the information required, we have referenced the information required by the statute, so that the regulations will not need to be changed if this part of the statute is

amended again. We have also included the reduced amount of information required from insular areas with annual block allotments of less than \$200,000 and from tribal grantees under the OMB approval. The proposed date changes which were related to forward funding are being deleted since forward funding will not be implemented. A technical change is being made to change the word "handicapped" to the word "disabled" in this section. The title of the section is being changed to "Required LIHEAP household report", to more accurately reflect its content under the current statutory requirements.

Because the provisions in § 96.82 that are included in this notice were not previously included in a notice of proposed rulemaking, we are issuing this part of the regulation as an interim final rule, with an opportunity for comment. This means that this portion of the regulation is effective November 15, 1999, after publication of this notice in the **Federal Register**, but that we are interested in receiving comments on the interim final provisions. We will review any comments which we receive by December 14, 1999. We will revise the rule, as appropriate, based on the comments we receive and on our experience in implementing the provisions.

#### *Section 96.84 Miscellaneous*

**End of Transfer Authority.** At the time of publication of the NPRM dated November 16, 1993 (58 FR 60498), grantees were no longer allowed to transfer up to 10 per cent of LIHEAP funds payable in a fiscal year to other HHS block grant programs. The 1990 amendments to the statute provided that, beginning in fiscal year 1994, no LIHEAP funds payable to a grantee may be transferred to other block grant programs. Accordingly, the NPRM proposed to amend the block grant regulations to specify that after September 30, 1993, grantees no longer may transfer any of their LIHEAP funds to the block grant programs specified in section 2604(f) of the statute.

The FY 1993 HHS appropriations law (Pub. L. 102-394) provided advance funding for LIHEAP for the first nine months of FY 1994, and allowed \$141,950,240 of those funds to be used by grantees to reimburse themselves for expenses incurred in FY 1993. Because they were appropriated as advance funding for FY 1994, any such funds used by grantees to reimburse themselves for FY 1993 expenses could not be considered funds payable to grantees in FY 1993 and thus could not have been used to calculate the

maximum amount that could have been transferred in FY 1993.

The authority for territories to consolidate funding for several programs under one or more HHS programs is not considered a transfer and thus did not terminate in FY 1994. Likewise, LIHEAP funds earmarked by grantees for use for LIHEAP weatherization assistance or other energy-related home repair, even if administered by another grantee agency, are not considered to be transferred, and this authority did not terminate in FY 1994.

No comments were received in response to § 96.84 of the NPRM. Therefore, the rule is adopted as proposed.

#### *Section 96.85 Income Eligibility*

The statute sets maximum and minimum income eligibility standards for participation in the LIHEAP program that are tied to poverty income guidelines and to State median income estimates as determined by the Bureau of Census. The date for adoption of the current poverty income guidelines is any time between the date of their publication in the **Federal Register** and the beginning of the next fiscal year. The date for adoption of the State median income estimates has been the first day of the fiscal year after their publication, but that date had not been reflected in the block grant regulations. The NPRM dated November 16, 1993 (58 FR 60498) proposed that the block grant regulations be amended to incorporate an adoption date for the State median income estimates that is consistent with the adoption date for the poverty income guidelines and to amend that adoption date to reflect the shift to forward funding, although the law subsequently deleted the concept of forward funding. The poverty income guidelines and the State median income estimates are published annually in the **Federal Register**, generally in the month of February or March. Therefore, with the amendment of this section, grantees could adopt the annual poverty income guidelines and the annual State median income estimates at any time between the date of publication in the **Federal Register** and the first day of the next fiscal year, October 1, or the beginning of the State fiscal year, whichever is later. Grantees could also choose to implement the changes during the period between the heating and cooling seasons.

No comments were received in response to § 96.85 of the NPRM. Therefore, the rule is adopted as proposed, except for deleting references to dates under forward funding.

## **Regulatory Procedures**

### *Paperwork Reduction Act of 1995*

Sections 96.10, 96.49, 96.81, and 96.82 contain information collections. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Department submitted a copy of these sections to the Office of Management and Budget (OMB) for its review. The following data collection forms have been approved by OMB:

Section 96.10(a) (Maternal and Child Health Services Block Grant guidance and Forms for the Title V Application/Annual Report, OMB clearance number 0915-0172, expiration date 11/99);

Section 96.10(c) (LIHEAP Model Plan, OMB Clearance Number 0970-0075, expiration date 12/31/2001);

Sections 96.49, LIHEAP Model Plan, OMB Clearance Number 0970-0075, expiration date 12/31/2001);

Section 96.81 (LIHEAP Carryover and Reallotment Report, OMB Clearance Number 0970-0106, expiration date 09/30/2001).

Section 96.82 (LIHEAP Report on Applicant and Recipient Households (OMB Control Number 0970-0060, expiration date 6/30/2000).

**Title:** Maternal and Child Health Services Block Grant guidance and Forms for the Title V Application/Annual Report (OMB clearance number 0915-0172, expiration date 11/99).

**Summary:** The rule modifies § 96.10(a) to allow the Department to specify the form of a block application when this is required or clearly contemplated by the authorizing statute. It also states that the MCH application shall be in the format specified by the Secretary, as required by the MCH authorizing law. Previously, the rule stated that no particular form was required. This information will be used to obtain descriptions of grantee programs and to make grant awards.

**Respondents:** State and territorial grantees under the MCH block grant. The number of likely respondents is 59.

**Burden information:** The MCH application and annual report are required annually of each grantee. The application, annual report, and guidance are currently undergoing revision and renewal of the OMB clearance. The public reporting burden for the revised application and annual report is estimated to be approximately 495 hours for each State grantee and 200 hours for the District of Columbia and territories, for 4 out of every 5 years, for a total burden of 26,550 hours. In the 5th year, a needs assessment is also required. In that year, the estimated burden is 675 hours for each State grantee and 360 hours for the District of

Columbia and territories, for a total burden of 36,990 hours. The average annual burden over the next three years is 30,030 hours. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The changes in this final rule are consistent with the notice of the request for OMB renewal of the information collection for the MCH application and annual report, published at 62 FR 17198. Furthermore, in the support of its commitment to new Federalism, the Department has made every effort to develop its application requirements and forms in close cooperation with the States, and where possible the communities. With respect to the MCH application and annual report, the Maternal and Child Health Bureau developed new guidance and an automated reporting system based on the emerging concept of "Performance Partnerships." Not only did the Bureau meet regularly with a Block Grant Guidance Work Group made up largely of State and local MCH representatives, but the Bureau field tested the guidance and information system with 9 states and held a number of sessions at three separate national meetings with representatives of all State MCH and Children with Special Health Care Needs Directors, as well as many local directors. The initial national sessions focused on discussing and reviewing the proposed guidance and performance partnership measures. Later sessions included hands on training in using the guidance that was provided by the Bureau and the nine test States.

**Title:** LIHEAP Model Plan (OMB Clearance Number 0970-0075, expiration date 12/31/2001).

**Summary:** Section 96.10(c) establishes application submission and completion deadlines for annual applications for LIHEAP funds from States and territories. This will allow the Department to issue grant awards as close as possible to the beginning of a grant period and thus meet its obligations under the Cash Management improvement Act to minimize interest charges associated with that Act. Other than establishing due dates, this final rule does not affect the information collection.

**Respondents:** State, territorial, and tribal grantees under the LIHEAP block grant.

**Burden information:** The LIHEAP application is required annually of each grantee. We estimate the number of likely respondents to be 180. The public reporting burden is estimated to be 1 hour for each of the 60 grantees that

submit a detailed plan (required of each grantee every three years) and 20 minutes for each of the 120 grantees that submit an abbreviated form, for an estimated total annual reporting and recordkeeping burden of 103 hours. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

**Title:** LIHEAP Model Plan (OMB Clearance Number 0970-0075, expiration date 12/31/2001).

**Summary:** Section 96.49 establishes application completion deadlines for annual applications for LIHEAP funds from Indian tribes and tribal organizations. The current rule establishes an application submission deadline for tribal grantees. This change will allow the Department to advise States early in the heating season whether they will be responsible for serving members of a tribe's service population, or whether the tribe will do so. Other than establishing a completion date, this final rule does not affect the information collection.

**Respondents:** State, territorial, and tribal grantees under the LIHEAP block grant.

**Burden information:** The LIHEAP application is required annually of each grantee. We estimate the number of likely respondents to be 180. The public reporting burden is estimated to be 1 hour for each of the 60 grantees that submit a detailed plan (required of each grantee every three years) and 20 minutes for each of the 120 grantees that submit an abbreviated form, for an estimated total annual reporting and recordkeeping burden of 103 hours. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

**Title:** LIHEAP Carryover and Reallotment Report (OMB Clearance Number 0970-0106, expiration date 09/30/2001).

**Summary:** Section 96.81 amends requirements relating to a required report on the amount of funds grantees wish to carry forward from the year in which they are appropriated to the following fiscal year (limited to 10% of funds payable to the grantee). The changes reflect amendments to the LIHEAP statute. The data are used to determine whether excess carryover funds will be available for reallotment to other grantees. Other than making the regulations consistent with statutory requirements, the changes do not affect the information collection.

**Respondents:** State, territorial, and tribal grantees under the LIHEAP block grant.

**Burden information:** The LIHEAP carryover and reallotment report is required annually of each grantee. We estimate the number of likely respondents to be 177. The public reporting burden is estimated to be 3 hours for each of the 177 grantees, for an estimated total annual reporting and recordkeeping burden of 531 hours. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

**Title:** LIHEAP Report on Applicant and Recipient Households (OMB Control Number 0970-0060, expiration date 6/30/2000).

**Summary:** Section 96.82 amends requirements for a required report on LIHEAP households applying for and receiving assistance in the prior fiscal year, in order to make them consistent with statutory provisions enacted in 1994 (Pub. L. 103-252). The collection of the statutorily required data has been approved by OMB. Other than making the regulatory language consistent with the statute and the OMB approval, this final rule does not affect the information collection.

**Respondents:** State, territorial, and tribal grantees under the LIHEAP block grant.

**Burden information:** The report on households applying for and receiving LIHEAP assistance the previous fiscal year must be submitted as part of a grantee's LIHEAP application each fiscal year. We estimate the number of likely respondents to be 183. The public reporting burden is estimated to be 38 hours for each of the 52 grantees that must submit all required data (all States, the District of Columbia, and Puerto Rico). The reporting burden is estimated to be 1 hour for each of the 131 grantees that submit information only on the number of households assisted under each type of assistance offered by the grantee (applicable to Indian tribes and tribal organizations, and to those insular areas with annual allotments of less than \$200,000). The estimated total annual reporting and recordkeeping burden is 2,107 hours. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Section 96.30 also contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d), the Department will submit a copy of this

section to the Office of Management and Budget (OMB) for its review.

*Title:* Financial Status Report, OMB Standard Form 269A.

*Summary:* Section 96.30 of this final rule establishes a new requirement that grantees under block grants covered by these regulations submit, within 90 days of the end of the grant period, OMB Standard Form 269A, Financial Status Report (short form), reporting the obligation and/or expenditure of block grant funds. Currently, the Department does not require obligation or expenditure reports for the block grants (although some grantees submit them voluntarily.) This has caused problems in the past because there is no clear-cut information as to when a grantee has completely used its grant funds, thus allowing the Department to close the grant account. This information would allow HHS and the grantee to verify the financial status of block grant funds and allow the Department to determine aggregate obligations, expenditures, and available balances.

*Respondents:* States, territories, and Indian tribes or tribal organizations that receive funds under the block grants subject to these regulations.

*Burden Information:* These obligation and expenditure reporting requirements will be required annually for all State, territorial, and tribal grantees under each of the block grant programs subject to these regulations. We estimate the number of likely respondents to be 620, based on the following number of grantees for each block grant: 180 for LIHEAP, 130 for CSBG, 57 for SSBG, 75 for PHHS, 59 for MCH, 59 for CMHS, and 60 for SAPT. The public reporting burden is estimated to be less than an hour each for a grantee, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, for an estimated total annual reporting and recordkeeping burden of 620 hours.

The Department of Health and Human Services will consider comments by the public on the proposed collection of information under § 96.30 in—

- Evaluating whether the proposed collections are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

Under the Paperwork Reduction Act of 1995, we are required to provide 60 day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To comment on this information collection and record keeping requirement, please send comments to the following: Department of Health and Human Services, Office of Planning and Evaluation, Room 447D, 200 Independence Ave., SW, Washington, DC 20201, Attn: Michael Herrell.

After receipt and full consideration of comments, the Department will submit the information collection requirement to OMB for review and approval. The requirement will take effect upon OMB approval.

#### *Regulatory Impact Analysis*

Executive Order 12866 requires preparation of a regulatory impact analysis if the regulation will have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. In this respect, the Department of Health and Human Services believes that this final regulation will not have an impact on the economy of \$100 million or more or adversely affect in a material way any of the sectors listed above, including State, local or tribal governments.

Primarily this rule amends the regulation governing block grant programs to clarify a number of administrative processes that include submission and completion dates for applications, where to submit waiver requests, direct funding of Indian tribes and other organizations, and procedures for termination, reduction, suspension and partial withholding of funding. In the case of application submission and completion dates, we have provided substantial flexibility in response to

public comments to accommodate the varying State cycles and believe setting these dates will have a positive impact in allowing the Department to issue awards to States in a timely manner. We also believe that our clarification of administrative processes for waiver requests, direct funding and related items provides only the minimum requirements and guidance needed and therefore will not impose a burden, especially since it is expected that these procedures will be needed only in rare circumstances.

The rule additionally codifies a number of statutory changes such as program name changes, statutory citations and fund transfer authorities. There is no burden associated with these changes.

Finally, the rule clarifies the authority of the Department to specify block grant reporting requirements where authorized by governing statutes and it requires some minimal financial reporting requirements to allow the Department to comply with legal requirements for fund management. Authority for establishing the content and format of reports required under block grants continues to be governed by the authorizing statutes and the clarification provided in this rule does not set substantive requirements. The Department will continue to solicit State input on the development of the format and content of required reports as it has done under the MCH program.

With respect to the financial reporting requirement, the Department believes the burden imposed is not significant. This information is already collected by the States and periodically submitted to the Department. This rule will provide a set process for submitting the information in the future, giving States a predictable routine to follow. The SF-269a is already used by States and is intended to further reduce the report burden on grantees. We have adopted the short form to acquire only the minimum information needed for our accounting purposes.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

#### *Federalism*

We have examined this rule under Executive Order 12612 on Federalism and do not believe that the rule violates the principles or policymaking criteria set forth by the Order. In several instances under the rule, we are establishing standard administrative procedures for actions such as application submission dates, direct funding of Indian tribes and tribal

organizations, termination of funds, and financial reporting. In establishing these procedures, the Department has tried to allow maximum flexibility to States in the way they can meet these requirements. For instance, the Department, in response to public comment, has revised the regulations to allow the Department to accommodate varying State and Tribal cycles in the submission of applications. We also note that a number of States have commented in support of various provisions of this rule. We will also continue to consult with States and Tribes in the development and modification of any standard reporting requirements and formats that are authorized by the governing program statutes.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (Pub. L. 96-354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small entities. The primary impact of this final rule is on State, tribal and territorial governments. Therefore, the Department of Health and Human Services certifies that these rules will not have a significant economic impact on a substantial number of small entities because they affect payments to States, tribes and territories. Thus, a regulatory flexibility analysis is not required.

#### *Catalog of Federal Domestic Assistance Program Numbers*

The Catalog of Federal Domestic Assistance Program Numbers for these programs are: 93.568 for the Low-Income Home Energy Assistance Program (LIHEAP); 93.569 for the Community Services Block Grant (CSBG); 93.667 for the Social Services Block Grant (SSBG); 93.991 for the Preventive Health and Health Services Block Grant (PHHS); 93.958 for the Community Mental Health Services Block Grant (CMHS); 93.959 for the Substance Abuse Prevention and Treatment Block Grant (SAPT); and 93.994 for the Maternal and Child Health Services Block Grant (MCH).

#### **List of Subjects in 45 CFR Part 96**

Child welfare, Community action program, Energy, Grant programs—energy, Grant programs—Indians, Grant programs—social programs, Health, Income assistance, Indians, Individuals with disabilities, Low and moderate income housing, Maternal and child health, Mental health programs, Public health, Reporting and record keeping requirements, Substance Abuse, Transfers, Weatherization.

Dated: November 10, 1998.

**Donna E. Shalala,**

*Secretary, Department of Health and Human Services.*

**Note:** This document was received in the Office of the Federal Register on October 8, 1999.

For the reasons set forth in the preamble, part 96 of title 45 of the Code of Federal Regulations is amended as follows:

### **PART 96—BLOCK GRANTS**

1. The authority citation for part 96 continues to read as follows:

**Authority:** 42 U.S.C. 300w *et seq.*; 42 U.S.C. 300x *et seq.*; 42 U.S.C. 300y *et seq.*; 42 U.S.C. 701 *et seq.*; 42 U.S.C. 8621 *et seq.*; 42 U.S.C. 9901 *et seq.*; 42 U.S.C. 1397 *et seq.*; 31 U.S.C. 1243 note.

#### **Subpart A—Introduction**

2. Section 96.1 is amended by revising paragraphs (a), (c), (d), (e), and (f) to read as follows:

##### **§ 96.1 Scope.**

(a) Community services (Pub. L. 97-35, sections 671-683) (42 U.S.C. 9901-9912).

\* \* \* \* \*

(c) Community mental health services (Public Health Service Act, sections 1911-1920 and sections 1941-1954) (42 U.S.C. 300x-1-300x-9 and 300x-51-300x-64).

(d) Substance abuse prevention and treatment (Public Health Service Act, sections 1921-1935 and sections 1941-1954) (42 U.S.C. 300x-21-300x-35 and 300x-51-300x-64).

(e) Maternal and child health services (Social Security Act, Title V) (42 U.S.C. 701-709).

(f) Social services, empowerment zones and enterprise communities (Pub. L. 97-35, sections 2351-55; Pub. L. 103-66, section 1371) (42 U.S.C. 1397-1397f).

\* \* \* \* \*

3. Section 96.2 is amended by revising paragraph (d) to read as follows:

##### **§ 96.2 Definitions.**

\* \* \* \* \*

(d) *State* includes the fifty States, the District of Columbia, and as appropriate with respect to each block grant, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and for purposes of the block grants administered by agencies of the Public Health Service, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

### **Subpart B—General Procedures**

3. Section 96.10 is amended by revising paragraph (a) and adding paragraphs (c) and (d) to read as follows:

#### **§ 96.10 Prerequisites to obtain block grant funds.**

(a) Except where prescribed elsewhere in this rule or in authorizing legislation, no particular form is required for a State's application or the related submission required by the statute. For the maternal and child health block grant, the application shall be in the form specified by the Secretary, as provided by section 505(a) of the Social Security Act (42 U.S.C. 705(a)).

(b) \* \* \*

(c) Effective beginning in fiscal year 2001, submission dates for applications under the social service and low-income home energy assistance block grant programs are:

(1) for the social services block grant, States and territories which operate on a Federal fiscal year basis, and make requests for funding from the Department, must insure that their applications (pre-expenditure reports) for funding are submitted by September 1 of the preceding fiscal year unless the Department agrees to a later date. States and territories which operate their social services block grant on a July 1-June 30 basis, must insure that their applications are submitted by June 1 of the preceding funding period unless the Department agrees to a later date.

(2) for the low-income home energy assistance program, States and territories which make requests for funding from the Department must insure that their applications for a fiscal year are submitted by September 1 of the preceding fiscal year unless the Department agrees to a later date.

(d) Effective beginning in fiscal year 2001, for the low-income home energy assistance program, States and territories which make requests for funding from the Department must insure that all information necessary to complete their applications is received by December 15 of the fiscal year for which they are requesting funds unless the Department agrees to a later date.

4. Section 96.15 is revised to read as follows:

#### **§ 96.15 Waivers.**

Applications for waivers that are permitted by statute for the block grants should be submitted to the Director, Centers for Disease Control and Prevention in the case of the preventive health and health services block grant; to the Administrator, Substance Abuse and Mental Health Services

Administration in the case of the community mental health services block grant and the substance abuse prevention and treatment block grant; to the Director, Maternal and Child Health Bureau in the case of the maternal and child health services block grant; and to the Director, Office of Community Services in the case of the community services block grant, the low-income home energy assistance program and the social services block grant. Beginning with fiscal year 1986, the Secretary's authority to waive the provisions of section 2605(b) of Public Law 97-35 (42 U.S.C. 8624(b)) under the low-income home energy assistance program is repealed.

### Subpart C—Financial Management

5. Section 96.30 is amended by designating text of the current paragraph as paragraph (a), adding a heading to newly designated paragraph (a), and adding a new paragraph (b) to read as follows:

#### § 96.30 Fiscal and administrative requirements.

(a) *Fiscal control and accounting procedures.* \* \* \*

(b) *Financial summary of obligation and expenditure of block grant funds.—*

(1) *Block grants containing time limits on both the obligation and the expenditure of funds.* After the close of each statutory period for the obligation of block grant funds and after the close of each statutory period for the expenditure of block grant funds, each grantee shall report to the Department:

(i) Total funds obligated and total funds expended by the grantee during the applicable statutory periods; and  
(ii) The date of the last obligation and the date of the last expenditure.

(2) *Block grants containing time limits only on obligation of funds.* After the close of each statutory period for the obligation of block grant funds, each grantee shall report to the Department:

(i) Total funds obligated by the grantee during the applicable statutory period; and  
(ii) The date of the last obligation.

(3) *Block grants containing time limits only on expenditure of funds.* After the close of each statutory period for the expenditure of block grant funds, each grantee shall report to the Department:

(i) Total funds expended by the grantee during the statutory period; and  
(ii) The date of the last expenditure.

(4) *Submission of information.*

Grantees shall submit the information required by paragraph (b)(1), (2), and (3) of this section on OMB Standard Form 269A, Financial Status Report (short form). Grantees are to provide the

requested information within 90 days of the close of the applicable statutory grant periods.

### Subpart D—Direct Funding of Indian Tribes and Tribal Organizations

6. Section 96.41 is amended by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

#### § 96.41 General determination.

(a) The Department has determined that, with the exception of the circumstances addressed in paragraph (c) of this section, Indian tribes and tribal organizations would be better served by means of grants provided directly by the Department to such tribes and organizations out of their State's allotment of block grant funds than if the State were awarded its entire allotment. Accordingly, with the exception of situations described in paragraph (c) of this section, the Department will, upon request of an eligible Indian tribe or tribal organization and where provided for by statute, reserve a portion of the allotment of the State(s) in which the tribe is located, and, upon receipt of a complete application and related submission meeting statutory and regulatory requirements, grant it directly to the tribe or organization.

(c) The Department has determined that Indian tribal members eligible for the funds or services provided through the block grants would be better served by the State(s) in which the tribe is located rather than by the tribe, where:

(1) The tribe has not used its block grant allotment substantially in accordance with the provisions of the relevant statute(s); and

(2) Following the procedures of 45 CFR 96.51, the Department has withheld tribal funds because of those deficiencies; and

(3) The tribe has not provided sufficient evidence that it has removed or corrected the reason(s) for withholding. In these cases, block grant funds reserved or set aside for a direct grant to the Indian tribe will be awarded to the State(s), and the State(s) will provide block grant services to the service population of the tribe. Before awarding these funds to the State(s), the Department will allow as much time as it determines to be reasonable for the tribe to correct the conditions that led to withholding, consistent with provision of timely and meaningful services to the tribe's service population during the fiscal year. If a State(s) is awarded funds under this paragraph, the State(s) will receive all remaining

funds set aside for the tribe for the Federal fiscal year for which the award is made. Where the Department has withheld funds from a tribe and the tribe has not taken satisfactory corrective action by the first day of the following fiscal year, all of the funds to serve the tribe's service population for the following fiscal year will be awarded to the State(s). The State(s) is responsible for providing services to the service population of the tribe in these cases. This paragraph also applies when funds are withheld from a tribal organization.

7. Section 96.42 is amended by adding a new sentence to the end of paragraph (f) to read as follows:

#### § 96.42 General procedures and requirements.

\* \* \* \* \*

(f) \* \* \* A tribe receiving direct block grant funding is not required to use those funds to provide tangible benefits to non-Indians living within the tribe's service area unless the tribe and the State(s) in which the tribe is located agree in writing that the tribe will do so.

8. A new § 96.49 is added to Subpart D to read as follows:

#### § 96.49 Due date for receipt of all information required for completion of tribal applications for the low-income home energy assistance block grants.

Effective beginning in FY 2001, for the low-income home energy assistance program, Indian tribes and tribal organizations that make requests for direct funding from the Department must insure that all information necessary to complete their application is received by December 15 of the fiscal year for which funds are requested, unless the State(s) in which the tribe is located agrees to a later date. After December 15, funds will revert to the State(s) in which the tribe is located, unless the State(s) agrees to a later date. If funds revert to a State, the State is responsible for providing low-income home energy assistance program services to the service population of the tribe.

### Subpart E—Enforcement

9. A new section 96.53 is added to subpart E to read as follows:

#### § 96.53 Length of withholding.

Under the low-income home energy assistance program and community services block grant, the Department may withhold funds until the Department finds that the reason for the withholding has been removed.



## Subpart H—Low-Income Home Energy Assistance Program

10. Section 96.81 is revised to read as follows:

### § 96.81 Carryover and reallocation.

(a) *Scope.* Pursuant to section 2607(b) of Public Law 97-35 (42 U.S.C. 8626(b)), this section concerns procedures relating to carryover and reallocation of regular LIHEAP block grant funds authorized under section 2602(b) of Public Law 97-35 (42 U.S.C. 8621(b)).

(b) *Required carryover and reallocation report.* Each grantee must submit a report to the Department by August 1 of each year, containing the information in paragraphs (b)(1) through (b)(4) of this section. The Department shall make no payment to a grantee for a fiscal year unless the grantee has complied with this paragraph with respect to the prior fiscal year.

(1) The amount of funds that the grantee requests to hold available for obligation in the next (following) fiscal year, not to exceed 10 percent of the funds payable to the grantee;

(2) A statement of the reasons that this amount to remain available will not be used in the fiscal year for which it was allotted;

(3) A description of the types of assistance to be provided with the amount held available; and

(4) The amount of funds, if any, to be subject to reallocation.

(c) *Conditions for reallocation.* If the total amount available for reallocation for a fiscal year is less than \$25,000, the Department will not reallocate such amount. If the total amount available for reallocation for a fiscal year is \$25,000 or more, the Department will reallocate such amount, except that the Department will not award less than \$25 in reallocated funds to a grantee.

11. Section 96.82 is revised to read as follows:

### § 96.82 Required report on households assisted.

(a) Each grantee which is a State or an insular area which receives an annual allotment of at least \$200,000 shall submit to the Department, as part of its LIHEAP grant application, the data required by section 2605(c)(1)(G) of Public Law 97-35 (42 U.S.C. 8624(c)(1)(G)) for the 12-month period corresponding to the Federal fiscal year (October 1–September 30) preceding the fiscal year for which funds are requested. The data shall be reported separately for LIHEAP heating, cooling, crisis, and weatherization assistance.

(b) Each grantee which is an insular area which receives an annual allotment

of less than \$200,000 or which is an Indian tribe or tribal organization which receives direct funding from the Department shall submit to the Department, as part of its LIHEAP grant application, data on the number of households receiving LIHEAP assistance during the 12-month period corresponding to the Federal fiscal year (October 1–September 30) preceding the fiscal year for which funds are requested. The data shall be reported separately for LIHEAP heating, cooling, crisis, and weatherization assistance.

(c) Grantees will not receive their LIHEAP grant allotment for the fiscal year until the Department has received the report required under paragraph (a) or (b) of this section.

12. Section 96.84 is amended by adding paragraph (d) as follows:

### § 96.84 Miscellaneous.

\* \* \* \* \*

(d) *End of transfer authority.* Beginning with funds appropriated for FY 1994, grantees may not transfer any funds pursuant to section 2604(f) of Public Law 97-35 (42 U.S.C. 8623(f)) that are payable to them under the LIHEAP program to the block grant programs specified in section 2604(f).

13. Section 96.85 is amended by revising paragraph (a) to read as follows:

### § 96.85 Income Eligibility.

(a) *Application of poverty income guidelines and State median income estimates.* In implementing the income eligibility standards in section 2605(b)(2) of Public Law 97-35 (42 U.S.C. 8624(b)(2)), grantees using the Federal government's official poverty income guidelines and State median income estimates for households as a basis for determining eligibility for assistance shall, by October 1 of each year, or by the beginning of the State fiscal year, whichever is later, adjust their income eligibility criteria so that they are in accord with the most recently published update of the guidelines or estimates. Grantees may adjust their income eligibility criteria to accord with the most recently published revision to the poverty income guidelines or State median income estimates for households at any time between the publication of the revision and the following October 1, or the beginning of the State fiscal year, whichever is later.

\* \* \* \* \*

[FR Doc. 99-26820 Filed 10-14-99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222 and 223

[Docket No. 950427117-9271-10; I.D.100499D]

RIN 0648-AH97

### Sea Turtle Conservation; Shrimp Trawling Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; request for comments.

**SUMMARY:** NMFS issues this temporary action to allow the use of limited tow times as an alternative to the requirement to use Turtle Excluder Devices (TEDs) by shrimp trawlers operating south and west of Cape Lookout, North Carolina, in the offshore waters out to 3 nautical miles (nm) (5.5 km). NMFS has been notified by the Director of the Division of Marine Fisheries of the North Carolina Department of Environmental and Natural Resources (NCDMF) that large amounts of debris in Atlantic Ocean waters along the southern portion of the State in the aftermath of the Hurricanes' Dennis and Floyd are causing difficulty with the performance of TEDs. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area and to determine whether impacts from the hurricanes continue to make TED use impracticable.

**DATES:** This action is effective from October 12, 1999, through November 12, 1999. Comments on this action are requested, and must be received by November 12, 1999.

**ADDRESSES:** Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Oravetz, 727-570-5312, or Barbara A. Schroeder, 301-713-1401.

#### SUPPLEMENTARY INFORMATION:

**Background**  
All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead