waiver—that the weatherization activities to be carried out by the grantee in the fiscal year for which the waiver is requested have been shown to produce measurable savings in energy expenditures. The commenter erroneously believed that the criterion applies only to "weatherization" and "ignores [other] 'low-cost energy related repair.'" However, paragraph (a) of section 96.83, which describes the scope of the section, states that "low-cost residential weatherization and other energy-related home repair" is referred to (more briefly) as "weatherization."

# Comment and Response

A commenter proposed that improvement in health and safety resulting from weatherization be considered acceptable to meet the third criterion. We cannot adopt this proposal, because it would violate the LIHEAP statute's requirements for this criterion—that the "weatherization activities have been demonstrated to produce measurable savings in energy expenditures by low-income households." However, the statute and regulations provide for a waiver if a grantee can demonstrate "good cause" for failing to meet one or more of the three "standard" waiver criteria.

#### Comment and Response

The interim rule's preamble indicated that, when determining whether to grant a "good cause" waiver, HHS would consider arguments and documentation that greater benefits will accrue to recipients for use of LIHEAP funds for weatherization than for cash assistance. A commenter asserted that neither the statute nor the legislative history supports considering this argument. However, the commenter mentions the Senate report's reference to long-term benefits resulting from weatherization improvements that reduce home energy costs. Consistent with the Senate report's prominent discussion of the expanded flexibility grantees have to provide energy conservation improvements through the weatherization waiver and the reductions in home energy costs resulting from these improvements, and with the statute's designation of HHS to determine rules for "good cause" waivers, we are not changing this policy.

### Comment and Response

The commenter also believed that if the grantee operated a shorter program, reduced outreach activities, and/or "took other administrative steps which may also have led to a reduction in applications," this would be relevant in

considering whether to grant a "good cause" waiver. We agree. We therefore revised section 96.83(e) to provide that a grantee requesting a "good cause" waiver must include with its request a comparison of its opening and closing dates for applications, and a description of its outreach efforts, for heating, cooling and crisis assistance, in the fiscal year for which the waiver is requested and in the preceding fiscal year. The comparison should address the actual dates and outreach efforts or the planned dates and planned outreach for future efforts expected to take place later in the fiscal year for which the waiver is requested. If the grantee's application period was longer and/or its outreach efforts were greater in the preceding fiscal year for one or more of these program components, the grantee must include an explanation demonstrating good cause why a waiver should be granted in spite of this fact. We also revised this section to provide that if the grantee took, or will take, other actions that led, or will lead, to a reduction in the number of applications for heating, cooling, and/or crisis assistance in the fiscal year for which the waiver is requested, the grantee must include with its request a description of these actions, and an explanation demonstrating good cause why a waiver should be granted in spite of these actions.

In addition, we made minor clarifying technical amendments to section 96.83(e) describing information that must be included in grantees' requests for "good cause" waivers under a newly designated paragraph (1), and explaining the conditions under which HHS will grant a "good cause" waiver under a newly-designated paragraph (2).

# Comment and Response

A commenter believed that data from local home energy vendors are most appropriate for documenting decreased home energy costs, because Department of Energy data are mostly national or regional. We agree. While we are not changing the regulation to require use of data from local vendors, we encourage grantees submitting waiver requests that document decreased home energy costs to use actual cost/price/expenditure data from the State or local area. In most cases, compiling the best available data probably would involve at least a sample of vendors in the grantee's service area.

# Comment and Response

A commenter said that HHS should require grantees submitting waiver requests to include copies of public statements in full, including transcripts of comments made during public hearings, because the interim rule's requirement that grantees submit "copies and/or summaries of public comments" affords grantees "an opportunity to selectively quote and characterize concerns expressed" by the public. The commenter quoted the Senate report statement that HHS "should not necessarily be guided only by the submissions from the state" in deciding whether to grant a waiver, to support the assertion that the legislative history "clearly" intends HHS "to independently consider these comments.'

We decline to require grantees seeking waivers to submit "copies of public statements in full, including transcripts of comments made during public hearings." We believe that the paperwork burden imposed would outweigh the possible advantages of such a requirement. Use of the words "not necessarily" in the Senate report indicates that HHS may decide the extent to which it will review public comments. We believe that grantees will make responsible decisions regarding submission of relatively brief public comments in full and submission of summaries of lengthy and/or numerous comments. We will independently consider the comments and summaries submitted to us. During compliance reviews, we will monitor the records/ documentation of grantees that submitted summaries of public comments with waiver requests, to assure that these summaries accurately reflect the comments.

In response to this commenter's recommendations, however, we changed section 96.83(b) of the regulations to require that written public comments on a proposed waiver request be made available for public inspection upon their receipt by grantees, and that any summaries of written comments, and transcripts and/ or summaries of any verbal comments made on the request at public meetings or hearings also be made available for public inspection. We also changed this section to specify that transcripts and/ or summaries of any comments made on the request at public meetings or hearings must be included with waiver requests submitted to HHS. Finally, we changed this section to require that copies of actual waiver requests must be made available for public inspection upon submission of the requests to HHS, enabling the public to review the decisions made by the grantee and verify that comments were accurately conveyed. These additional requirements strengthen grantees' accountability to the public by assuring