

that may be handled by older children could be considered children's products if such movies, video games, or music were specifically aimed at and marketed to children 12 years of age or younger and have no appeal to older audiences.

(5) *Art materials*—Materials sized, decorated, and marketed to children 12 years of age or younger, such as crayons, finger paints and modeling dough, would be considered children's products. Crafting kits and supplies that are not specifically marketed to children 12 years of age or younger likely would be considered products intended for general use. The marketing and labeling of raw materials (such as modeling clay, paint and paint brushes) may often be given high priority in an age determination for these art materials because the appeal and utility of these raw materials has such a wide audience.

(6) *Books*—The content of a book can determine its intended audience. Children's books have themes, vocabularies, illustrations, and covers that match the interests and cognitive capabilities of children 12 years of age or younger. The age guidelines provided by librarians, education professionals, and publishers may be dispositive for determining the intended audience. Some children's books have a wide appeal to the general public, and in those instances, further analysis may be necessary to assess who the primary intended audience is based on consideration of relevant additional factors such as product design, packaging, marketing and sales data.

(7) *Science equipment*—Microscopes, telescopes, and other scientific equipment that would be used by an adult, as well as a child, are considered general use products. Equipment with a marketing strategy that targets schools, such as scientific instrument rentals, would not convert such products into children's products if such products are intended for general use, regardless of how the equipment is leased, rented, or sold. This equipment is intended by the manufacturer for use primarily by adults, although there may be incidental use by children through such programs. In general, scientific equipment that is specifically sized for children and/or has childish themes or decorations intended to attract children is considered a children's product. Toy versions of such items are also considered children's products.

(8) *Sporting goods and recreational equipment*—Sporting goods that are primarily intended for consumers older than 12 years of age are considered general use items. Regulation-sized sporting equipment, such as basketballs, baseballs, bats, racquets, and hockey

pucks, are general use items even though some children 12 years of age or younger will use them. Sporting goods become children's products when they are sized to fit children or are otherwise decorated with childish features that are intended to attract child consumers. Likewise, recreational equipment, such as roller blades, skateboards, bicycles, camping gear, and fitness equipment, are considered general use products unless they are sized to fit children 12 years of age or younger and/or are decorated with childish features by the manufacturer.

(9) *Musical instruments*—Musical instruments suited for an adult musician as well as a child are general use products. Instruments primarily intended for children can be distinguished from adult instruments by their size and marketing themes. Products with a marketing strategy that targets schools, such as instrument rentals, would not convert such products into children's products if such products are intended for general use, regardless of how the instruments are leased, rented, or sold. These instruments are intended by the manufacturer for use primarily by adults, although there also may be incidental use by children through such programs. However, products that produce music or sounds in a manner that simplifies the process so that children can pretend to play an instrument are considered toys primarily intended for children 12 years of age or younger. In general, instruments that are specifically sized for children and/or have childish themes or decorations intended to attract children are considered children's products.

Dated: April 7, 2010.

**Todd A. Stevenson,**  
Secretary, Consumer Product Safety Commission.

[FR Doc. 2010-8431 Filed 4-19-10; 8:45 am]

**BILLING CODE 6355-01-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 577

[Docket No. FR-5333-P-01]

RIN 2506-AC26

### Homeless Emergency Assistance and Rapid Transition to Housing: Defining "Homeless"

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development.

**ACTION:** Proposed rule.

**SUMMARY:** This rule commences HUD's regulatory implementation of the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), enacted into law on May 20, 2009. The HEARTH Act consolidates three of the separate homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program and creates the Emergency Solutions Grant Program and the Rural Housing Stability Program. The HEARTH Act also codifies in statutory law the Continuum of Care planning process, long a part of HUD's application process to assist homeless persons by providing greater coordination in responding to their needs. The HEARTH Act defines the terms "homeless," "homeless individual," "homeless person," and "homeless individual with a disability," but these definitions contain terms that require further elaboration. Since the scope of these terms is essential to the development of an appropriate regulatory structure for the homeless assistance programs as consolidated and amended by the HEARTH Act, HUD is initiating the rulemaking process with this proposed rule, which solely addresses the definition of these terms.

**DATES:** *Comment Due Date.* June 21, 2010

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street, SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the

public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

**No Facsimile Comments.** Facsimile (FAX) comments are not acceptable.

**Public Inspection of Public Comments.** All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410-7000; telephone number 202-708-4300 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Information Relay Service at 800-877-8339 (this is a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### I. Background—HEARTH Act

The Helping Families Save Their Homes Act of 2009 was signed into law on May 20, 2009 (Pub. L. 111-22). This new law implements a variety of measures directed toward keeping individuals and families from losing their homes. Division B of this new law is the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). The HEARTH Act consolidates and amends three separate homeless assistance programs carried out under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 *et seq.*) (McKinney-Vento Act) into a single grant program that is

designed to improve administrative efficiency and enhance response coordination and effectiveness in addressing the needs of homeless persons. The single Continuum of Care program established by the HEARTH Act consolidates the following programs: the Supportive Housing program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy program. The former Emergency Shelter Grant program is renamed the Emergency Solutions Grant program and revised to broaden existing emergency shelter and homelessness prevention activities and to add rapid re-housing activities. The new Rural Housing Stability program replaces the Rural Homelessness Grant program. The HEARTH Act also codifies in law and enhances the Continuum of Care planning process, the coordinated response to addressing the needs of homelessness established administratively by HUD in 1995. In addition, this proposed rule may affect the Base Realignment and Closure and Title V property disposition programs. These changes will be considered through separate rulemaking in conjunction with the other Federal agencies that administer these programs—the Department of Health and Human Services and the General Services Administration.

##### II. This Proposed Rule

As amended by the HEARTH Act, section 103 of the McKinney-Vento Act defines “homeless,” “homeless individual,” “homeless person,” and “homeless individual with a disability,” but these definitions contain terms that require explanation or elaboration. With this proposed rule, HUD seeks to provide the necessary clarification and elaboration of these terms in order to satisfy section 1003(b) of the HEARTH Act, which requires HUD to “provide sufficient guidance to recipients of funds under title IV of the McKinney-Vento Homeless Assistance Act to allow uniform and consistent implementation of the requirements of section 103 of such Act.” HUD will be publishing proposed rules for the new Emergency Solutions Grant program, the Continuum of Care program, and the Rural Housing Stability program. Each of these programs will include the definition(s) from this proposed rule. This proposed rule, however, sets out regulatory text only for the Emergency Solutions Grants program codified at 24 CFR part 577. HUD is considering repeating this regulatory text in the regulations for the Continuum of Care and Rural Housing Stability programs at the final rule stage, rather than simply

cross-referencing to the regulatory text in part 577. HUD believes a complete set of regulations for each program may be more user-friendly. HUD specifically welcomes public comment on this issue.

This proposed rule clarifies key terms in the definitions of “homeless,” “homeless individual,” “homeless person,” and “homeless individual with a disability.” First, this proposed rule clarifies that individuals and families may qualify as homeless under four possible categories, corresponding to the broad categories established by the statutory language of the definition in section 103 of the McKinney-Vento Act as amended by the HEARTH Act. The first category (§ 577.2(1)), consisting of an individual or family who lacks a fixed, regular, and adequate nighttime residence, is taken from section 103(a)(1) of the statute, but also incorporates the language from sections 103(a)(2), (a)(3), and (a)(4). HUD has concluded that paragraphs (a)(2) through (a)(4) of section 103 define this first category of homeless (section 103(a)(1)) by providing three subsets of that category. That is, paragraphs (a)(2) through (a)(4) of section 103 are not separate statutory categories of eligibility, but rather specifically define the first category. Second, under a subset of the first category (§ 577.2(1)(iii)), an individual who resided in a shelter or place not meant for human habitation, and who is exiting an institution where he or she temporarily resided, is eligible for homeless assistance. This proposed rule clarifies that the individual must have been homeless immediately before entering the institution, and in order to be consistent with other parts of the regulation, HUD defines “temporarily resided” as a period of 90 days or less. In the past, HUD has used a 30-day standard, but has found that a period of more than 30 days is more realistic for individuals to keep their housing and homeless status. Additionally, in the statute, the definition of “chronically homeless” in section 401(2)(B) uses “fewer than 90 days” as the measure for determining temporarily resided in an institutional care facility or similar facility.

The second category under which an individual or family may qualify as homeless (§ 577.2(2)(i)) is individuals or families who will imminently lose their primary nighttime residence. The statute provides three cases in which the imminent loss of a primary nighttime residence may be evidenced in order to qualify as homeless: the individual or family: (1) Is subject to a court order to vacate, (2) lacks the resources to continue staying in a hotel

or a motel, or (3) is no longer being allowed to stay by the owner or renter of housing with whom the individual or family is staying. In each of these cases, the individual or family may be considered homeless up to 14 days before they are to be displaced from their current housing.

The proposed rule provides, in (§ 577.3(b)(3)(i)), that the service provider must retain whatever evidence is relied upon in determining that an individual or family will imminently lose their housing. For example, the service provider may obtain a copy of the eviction order, or may interview the applicant to document the applicant's resources. Where the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and where an eviction notice or similar documentation evidencing loss of housing is not available, the statute permits, as evidence of this status, any oral statement from an individual or family that is found to be credible to prove that the condition is present. While the statute provides that an oral statement from an individual or family member may establish eligibility as homeless, the statute requires the oral statement to be found credible to be considered credible evidence.

Given the statutory language that the oral statement must be found credible to be considered credible evidence, the proposed rule provides that to be found as credible evidence, any oral statement from an individual or family seeking homeless assistance must be documented and verified. However, the proposed rule provides for the most minimal documentation in order to not conflict with the statutory permissibility of making an oral statement and to meet the corresponding statutory requirement that the statement be credible evidence. The proposed rule provides that the oral statement must be documented by a self-certification; that is, the individual or head of household certifies in writing to the veracity of the oral statement made. After the oral statement is documented, it must be verified by: (a) a statement of the owner or renter of the housing in which the individual or family is currently residing, as recorded by the intake worker, or (b) due diligence undertaken by the intake worker in attempting to obtain a statement from the owner or renter that is documented in writing by the intake worker. (See in (§ 577.3(b)(3)(i)(C).) An example of where the second option may be used is where the intake worker tries to call the owner of the housing and the owner is uncooperative and does not return multiple phone calls.

The intake worker can document such unanswered calls as evidence of due diligence to verify the oral statement. As discussed later in this preamble, verification of self-certified statements is not required in cases involving victims of domestic violence.

The proposed rule provides for written documentation of the oral statement by the individual or head of household to address the statutory requirement that the statement be found to be credible. Documentation of the statement is not only important for the issue of credible evidence, as discussed above, but ensures that the individual has had the opportunity to review the oral statement as set forth in writing, to confirm that the written statement accurately reflects the oral statement. The self-certification therefore serves two purposes; it: (1) Meets the statutory requirement for credible evidence; and (2) protects the individual from any failures, not attributable to the individual, with respect to any possible inaccuracies in the written statement that could result in delay in verification of the individual's statement or result in delay or denial of services.

The third category under which an individual or family may qualify as homeless (§ 577.2(3)) consists of unaccompanied youth and homeless families with children and youth who are defined as homeless under other Federal statutes who do not otherwise qualify as homeless under the definition, provided that they meet the following three conditions. The criteria for this category under section 103(a)(6) of the statute are: having experienced a long term period without living independently in permanent housing, having experienced persistent instability as measured by frequent moves over such period, and being expected to continue in such status for an extended period of time. This rule clarifies that a "long term period without living independently in permanent housing" means living for the 91 or more days immediately prior to applying for homeless assistance without a lease or ownership interest in the occupied property in the youth's or head of household's name. In addition, "persistent instability" means three or more moves over the 90-day period immediately prior to applying for homeless assistance. HUD specifically solicits comments on HUD's proposal for determining persistent instability.

In order to prove the condition of a long-term period without living independently in permanent housing and of persistent instability, an oral or written statement by the youth or head of household is accepted as credible

evidence when verified by the owners or renters of the previous housing from which the applicant has moved. The evidentiary requirements for this category, like those for imminent loss of housing, include written records of the statements by each of the owners or renters where the individual or family resided or, in cases where these statements are unobtainable, a written record of the due diligence exercised by the intake worker to obtain these statements. A separate § 577.3 describes the documentation requirements to determine whether an individual or family is homeless.

Within the third category is the condition that the unaccompanied youth's or family's persistent instability and inability to live independently in permanent housing are expected to continue due to a variety of factors, including multiple barriers to employment. "Multiple barriers to employment" is proposed to mean two or more of the following barriers: lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration, and a history of unstable employment.

The fourth category under which an individual or family may qualify as homeless is provided under § 577.2(4), which reflects section 103(b) of the statute. HUD will consider as homeless any individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life threatening conditions that relate to violence against the individual or a family member that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence, and who has no other residence and lacks the resources or support networks to obtain other permanent housing. The victimized member of the household is not required to be the owner or renter of the unit.

In light of the particular safety concerns surrounding victims of domestic violence, the proposed rule provides that acceptable evidence that an individual or family qualifies under this category of the homeless definition may include an oral statement from the individual or family. This oral statement does not need to be verified, but it must be documented by either self-certification (signed statement by the victim certifying an oral statement's veracity) or a certification by the intake worker (signed statement by the intake

worker certifying the victim’s oral statement).

HUD solicits comments on whether the certifications that the proposed rule provides as acceptable evidence would be less of a burden if the statement and certification are made on a HUD-approved form.

The upcoming proposed rule addressing program requirements will include special confidentiality requirements to protect documentation and information concerning individuals and families fleeing domestic violence. These special confidentiality requirements will be similar to those already in place under HUD’s existing homeless programs. HUD welcomes comments on confidentiality requirements that HUD should consider in the upcoming proposed rule.

Lastly, for the definition of “homeless individual with a disability,” this proposed rule clarifies that any condition arising from the etiologic agency for acquired immunodeficiency syndrome includes infection with the human immunodeficiency virus (HIV).

The Department invites comment on the further elaboration of the terms “homeless,” “homeless individual,” “homeless person,” and “homeless individual with a disability,” as presented in this proposed rule. The purpose of this proposed rule is to provide sufficient guidance for the consistent and effective implementation of the new definitions in the HEARTH Act, and public comment on this rule will assist HUD in meeting this purpose.

**III. Findings and Certifications**

*Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, “Regulatory Planning and Review.” This rule was determined to be a “significant regulatory action” as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street, SW., Washington, DC 20410–

0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

*Information Collection Requirements*

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

**REPORTING AND RECORDKEEPING BURDEN**

Section reference	Number of respondents	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
24 CFR 577.3 Reporting requirements .....	19,500	65	0.25	316,875

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the

proposal by name and docket number (FR–5333–P–01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: 202–395–6947; and

Reports Liaison Officer, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7220, Washington, DC 20410–8000.

*Environmental Impact*

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the

National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose a Federal mandate on any State, local, or tribal government, or on the private sector, within the meaning of UMRA.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule solely addresses the definitions of “homeless,” “homeless individual,” “homeless person,” and “homeless

individual with a disability.” The purpose of this rule is to determine the universe of individuals and families who qualify as “homeless” under the HEARTH Act, and are therefore eligible to be served by HUD homeless programs that will be implemented by separate rulemaking. Given the narrow scope of this rule, HUD has determined that it would not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD’s determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD’s objectives as described in this preamble.

#### *Executive Order 13132, Federalism*

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

#### **List of Subjects in 24 CFR Part 577**

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Homeless, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Supportive services.

Accordingly, for the reasons described in the preamble, HUD proposes to add part 577 to subchapter C of chapter V of subtitle B of 24 CFR to read as follows:

#### **PART 577—EMERGENCY SOLUTIONS GRANTS PROGRAM**

Sec.  
577.2 Definitions.  
577.3 Recordkeeping requirements.

**Authority:** 42 U.S.C. 11301, 42 U.S.C. 3535(d).

#### **§ 577.2 Definitions.**

*Developmental disability* means, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002):

(1) A severe, chronic disability of an individual that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the individual attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency; and

(v) Reflects the individual’s need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1)(i) through (v) of this definition if the individual, without services and supports, has a high probability of meeting those criteria later in life.

*Homeless, homeless individual, and homeless person* mean:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence and is:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in a shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks needed to obtain other permanent housing;

(3) Unaccompanied youth and homeless families with children and youth defined as homeless under other Federal statutes who do not otherwise qualify as homeless under this definition and:

(i) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 91 days immediately preceding the application for homeless assistance;

(ii) Have experienced persistent instability as measured by three moves or more during the 90-day period immediately before applying for homeless assistance; and

(iii) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration, and a history of unstable employment; and

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member that has either taken place within the individual’s or family’s primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks to obtain other permanent housing.

*Homeless individual with a disability* means an individual who is homeless and has a disability that:

(1)(i) Is expected to be long-

continuing or of indefinite duration;

(ii) Substantially impedes the individual’s ability to live independently;

(iii) Could be improved by the provision of more suitable housing conditions; and

(iv) Is a physical, mental, or emotional impairment, including an impairment caused by alcohol or drug abuse, post-traumatic stress disorder, or brain injury;

(2) Is a developmental disability, as defined in this section; or

(3) Is the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agency for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV).

### § 577.3 Recordkeeping requirements.

(a) *General*.—[Reserved].

(b) *Homeless Status*.—Each recipient of assistance under this part must maintain and follow written intake procedures to ensure compliance with the homeless definition in § 577.2. The procedures must require documentation at intake of the evidence relied upon to establish and verify homeless status of the individuals and families applying for homeless assistance. The recipient must keep these records for 5 years after the end of the grant term.

(1) Acceptable evidence under § 577.2, in paragraphs (1)(i) and (ii) of the homeless definition of homeless status, includes certification by the individual or head of household seeking assistance, a written observation by an outreach worker of the conditions where the individual or family was living, or a written referral by another housing or service provider.

(2) Acceptable evidence under § 577.2, in paragraph (1)(iii) of the homeless definition, that a person resided in a shelter or place not meant for human habitation and is exiting an institution where he resided for 90 days or less, includes the evidence described in paragraph (b)(1) of this section, plus a written referral from a social worker, case manager, or other appropriate official of the institution, stating the beginning and end dates of the time residing in the institution.

(3)(i) The evidence under § 577.2, in paragraph (2)(i) of the homeless definition, that a person or family will imminently lose their housing, must include one of the following:

(A) A court order resulting from an eviction action notifying the individual or family that they must leave within 14 days of the date of their application for homeless assistance;

(B) For individuals and families leaving hotel or motel rooms not paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, evidence that the individual or family lacks the financial resources necessary to reside there for more than 14 days from the date of application for homeless assistance; or

(C) An oral statement by the individual or head of household seeking assistance that the owner or renter of the

housing in which they currently reside will not allow them to stay for more than 14 days from the date of application for homeless assistance. This oral statement must be documented and verified. The oral statement must be documented by a self-certification; that is, the individual or head of household certifies in writing to the veracity of the oral statement made. Verification must be received from the owner or renter of the housing in which the individual or family resides at the time of application for homeless assistance. The verification may be a written or oral statement of the owner or renter recorded by the intake worker or a written record of the intake worker's due diligence in attempting to obtain a statement from the owner or renter.

(ii) The evidence under § 577.2, in paragraph (2)(i) of the homeless definition, must also include:

(A) Certification by the individual or head of household seeking assistance that no subsequent residence has been identified, and

(B) Self-certification or other written documentation that the individual or family lacks the financial resources and support networks needed to obtain other permanent housing.

(4) Acceptable evidence under § 577.2, in paragraph (3) of the homeless definition, for unaccompanied youth and homeless families with children and youth defined as homeless under other Federal statutes that do not otherwise qualify as homeless, is—

(i) For § 577.2, in paragraph (3)(i) of the homeless definition, certification by the homeless individual or head of household seeking assistance, written observation by an outreach worker or referral by a housing or service provider;

(ii) For § 577.2, in paragraph (3)(ii) of the homeless definition, certification by the individual or head of household seeking assistance and any available supporting documentation that the individual or family moved three or more times during the 90-day period immediately before applying for homeless assistance, including: Recorded statements or records obtained from each owner or renter of housing, provider of shelter or housing, or social worker, case worker, or other appropriate official of a hospital or institution in which the individual or family resided; or, where these statements or records are unobtainable, a written record of the intake worker's due diligence in attempting to obtain these statements or records; and

(iii) For § 577.2, in paragraph (3)(iii) of the homeless definition, acceptable evidence includes written diagnosis

from an appropriate licensed professional, intake staff-recorded observation of disability confirmed within 45 days of the application for assistance by an appropriate licensed medical professional, employment records, department of corrections records, and literacy, English proficiency, and IQ tests.

(5) Acceptable evidence under § 577.2, in paragraph (4) of the homeless definition, for individuals or families fleeing domestic violence, includes an oral statement by the individual or head of household seeking assistance, written observation by the intake worker, or written referral by a housing or service provider, social worker, the hospital, or the police. If an oral statement is used, it must be documented by either a self-certification or a certification by the intake worker.

Dated: March 22, 2010.

**Mercedes Márquez,**

*Assistant Secretary for Community, Planning and Development.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 84

[Docket Number NIOSH-0137]

RIN 0920-AA33

### Total Inward Leakage Requirements for Respirators

**AGENCY:** Centers for Disease Control and Prevention, Department of Health and Human Services.

**ACTION:** Notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) is reopening the comment period for the notice of proposed rulemaking by the National Institute for Occupational Safety and Health (NIOSH) of CDC, entitled "Total Inward Leakage Requirements for Respirators," published in the **Federal Register** on October 30, 2009 (74 FR 56141). The comment period on this proposed regulation closed on March 29, 2010 (74 FR 66935) and is being reopened until September 30, 2010.

**DATES:** All written comments must be received on or before September 30, 2010.

**ADDRESSES:** You may submit comments, identified by RIN: 0920-AA33, by any of the following methods: