

**(i) Revision to AFM—In-flight Warning**

Within 15 days after the effective date of this AD, revise the Limitations section of the AFM to include the statement found in figure

2 to paragraph (i) of this AD. This may be done by inserting a copy of this AD into the AFM. When a statement identical to that in figure 2 to paragraph (i) of this AD has been

included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

**Figure 2 to Paragraph (i) of this AD – In-flight Warning**

**WHEEL DESPIN FAIL**

"WARNING: IF AMBER WHEEL DESPIN FAIL CAS MESSAGE DISPLAYS, BRAKING CAPABILITY MAY BE REDUCED AND/OR THERE MAY BE NO BRAKING ON ONE SIDE, RESULTING IN ASYMMETRIC BRAKING. **SELECT THE LONGEST RUNWAY** POSSIBLE FOR LANDING"

**(j) Credit for Previous Actions**

This paragraph provides credit for the actions required by paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using Gulfstream G650 Alert Customer Bulletin 4, dated November 6, 2015; or Gulfstream G650ER Alert Customer Bulletin 4, dated November 6, 2015; which are not incorporated by reference in this AD.

**(k) No Reporting Requirement**

Although Gulfstream G650 Alert Customer Bulletin 4A, dated November 13, 2015; and Gulfstream G650ER Alert Customer Bulletin 4A, dated November 13, 2015; specify to submit certain information to the manufacturer, this AD does not require that action.

**(l) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (m) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (l)(3)(i) and (l)(3)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining

approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

**(m) Related Information**

For more information about this AD, Gideon Jose, Aerospace Engineer, Systems and Equipment Branch, ACE-119A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404-474-5569; fax: 404-474-5606; email: [Gideon.Jose@faa.gov](mailto:Gideon.Jose@faa.gov).

**(n) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Gulfstream G650 Alert Customer Bulletin 4A, dated November 13, 2015.

(ii) Gulfstream G650ER Alert Customer Bulletin 4A, dated November 13, 2015.

(3) For Gulfstream service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402-2206; telephone 800-810-4853; fax 912-965-3520; email [pubs@gulfstream.com](mailto:pubs@gulfstream.com); Internet [http://www.gulfstream.com/product\\_support/technical\\_pubs/pubs/index.htm](http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm).

(4) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on November 25, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 91 and 578**

[Docket No. FR-5809-F-01]

RIN 2506-AC37

**Homeless Emergency Assistance and Rapid Transition to Housing: Defining "Chronically Homeless"**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the definition of "chronically homeless" that will be used in HUD's Continuum of Care Program, and in the Consolidated Submissions for Community Planning and Development Programs. This definition has been the subject of significant public comment which has guided HUD in establishing the definition of "chronically homeless" that will be used in its homeless assistance programs. The final rule also establishes the necessary recordkeeping requirements that correspond to the definition of "chronically homeless" for the Continuum of Care Program. Historically, other programs within HUD, as well as other agencies such as the United States Interagency Council on Homelessness and the Department of Veteran Affairs, have adopted HUD's definition of chronically homeless and

may also choose to adopt the definition of “chronically homeless” included in this final rule, however, it is not required.

**DATES: Effective Date:** January 4, 2016.

**Compliance Dates:** Continuum of Care recipients must comply with the regulations promulgated by this rule as of January 15, 2016. The Continuum of Care Program grant agreement provides that upon publication of a final rule for the Continuum of Care Program, that follows the July 31, 2012, interim rule, the final rule, not the prior interim rule, will govern the grant agreement. Continuum of Care Program recipients, therefore, must comply with the regulations promulgated by this rule for all program participants admitted after January 15, 2016. The regulations promulgated by this rule do not apply retroactively to program participants admitted to a Continuum of Care Program project prior to January 15, 2016.

**FOR FURTHER INFORMATION CONTACT:**

Norm Suchar, 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 can access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

*Purpose and Legal Authority*

The purpose of this rule is to establish a final definition of the term “chronically homeless” that will be used in HUD’s Continuum of Care Program (24 CFR part 578) and the Consolidated Submissions for Community Planning and Development Programs (24 CFR part 91). “Chronically homeless” is defined in section 401(2) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11360 (McKinney-Vento Act or Act), as an individual or family that is homeless and resides in a place not meant for human habitation, a safe haven, or in an emergency shelter, and has been homeless and residing in such a place for at least 1 year or on at least four separate occasions in the last 3 years. The statutory definition also requires that the individual or family has a head of household with a diagnosable substance use disorder, serious mental illness, developmental disability, post-traumatic stress disorder, cognitive

impairments resulting from a brain injury, or chronic physical illness or disability.

Following the statutory definition, HUD first proposed a regulatory definition of “chronically homeless” in a December 5, 2011, interim rule that established regulations for the Emergency Solutions Grants program and made conforming amendments to HUD’s Consolidated Plan regulations (76 FR 75954). In response to concerns raised in public comments, HUD amended the definition of “chronically homeless” in the Continuum of Care Program interim rule, published July 31, 2012 (77 FR 45422), and sought further public comment on the definition of “chronically homeless.” At a convening held on May 30, 2012, HUD also solicited feedback from nationally recognized experts on a workable definition of “chronically homeless,” as described in the Rural Housing Stability Assistance Program proposed rule, published March 27, 2013 (78 FR 18726). This final rule results from HUD’s consideration of the public comments on the definition of “chronically homeless” and feedback from the convening of nationally recognized experts.

*Summary of Major Provisions*

This rule provides a definition of “chronically homeless” in 24 CFR 91.5, which applies to Consolidated Submissions for Community Planning and Development Programs, and in 24 CFR 578.3, which applies to the Continuum of Care Program. In addition, this rule amends 24 CFR 578.103, which stipulates recordkeeping requirements for the Continuum of Care Program, to include requirements that recipients and subrecipients of Continuum of Care funds must follow in order to demonstrate that an individual or family has met the definition of “chronically homeless.”

A “chronically homeless” individual is defined to mean a homeless individual with a disability who lives either in a place not meant for human habitation, a safe haven, or in an emergency shelter, or in an institutional care facility if the individual has been living in the facility for fewer than 90 days and had been living in a place not meant for human habitation, a safe haven, or in an emergency shelter immediately before entering the institutional care facility. In order to meet the “chronically homeless” definition, the individual also must have been living as described above continuously for at least 12 months, or on at least four separate occasions in the last 3 years, where the combined

occasions total a length of time of at least 12 months. Each period separating the occasions must include at least 7 nights of living in a situation other than a place not meant for human habitation, in an emergency shelter, or in a safe haven.

Chronically homeless families are families with adult heads of household who meet the definition of a chronically homeless individual. If there is no adult in the family, the family would still be considered chronically homeless if a minor head of household meets all the criteria of a chronically homeless individual. A chronically homeless family includes those whose composition has fluctuated while the head of household has been homeless.

Recipients and subrecipients of Continuum of Care Program funds are required to maintain and follow written intake procedures to ensure compliance with the “chronically homeless” definition. The procedures must establish the order of priority for obtaining evidence as third-party documentation first, intake worker observations second, and certification from the individual seeking assistance third.

*Benefits and Costs*

This final rule establishes a regulatory definition for the term “chronically homeless” that meets the statutory definition of the term established in the McKinney-Vento Act and focuses on persons with the longest histories of homelessness, who often also have the highest need. This will ensure that funds are targeted to providing permanent supportive housing solutions for these individuals and families.

This final definition of “chronically homeless” provides greater clarity than the statutory definition and HUD’s previous proposed definitions so that recipients and subrecipients can benefit from understanding which homeless individuals and families can be considered “chronically homeless.” This final definition will ensure that communities are consistently using the same criteria when considering whether a person is chronically homeless, and that HUD receives consistent and accurate information nationwide. Communities previously used various standards for the length of time to define an “episode” for a person to be considered chronically homeless, which made it difficult for HUD to compare data nationally and failed to ensure resources were going to those with the longest histories of homelessness.

Although recordkeeping necessarily entails costs, and this rule establishes certain recordkeeping requirements for

the Continuum of Care Program, recipients of Continuum of Care Program-funded permanent supportive housing projects that serve the chronically homeless have always been required to document the chronically homeless status of program participants. Failure to maintain appropriate documentation of a household's eligibility is the monitoring finding that most often requires recipients of HUD funds to repay grant funds. This rule establishes recordkeeping requirements to assist Continuum of Care Program recipients in appropriately and consistently documenting chronically homeless status, which will help to ensure that recipients are not required to repay grant funds due to inappropriately documenting eligibility for these projects.

## II. Background—HEARTH Act

The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act), which was enacted on May 20, 2009, amended the McKinney-Vento Act and consolidates three separate homeless assistance programs administered by HUD under the McKinney-Vento Act into a single grant program, the Continuum of Care Program; revises the Emergency Shelter Grants Program and renames the program the Emergency Solutions Grants program; and creates the Rural Housing Stability Assistance Program to replace the Rural Homelessness Grant program. Commencing in 2010 with the publication of the proposed rule on the definition of “homeless,” HUD initiated the rulemaking process to establish the regulations for these new and revised programs. In this rule, HUD provides the final definition of “chronically homeless” that will apply to its homeless assistance programs, and makes this definition applicable, through amendments, to the regulations at 24 CFR part 91 (Consolidated Submissions for Community Planning and Development Programs) and 24 CFR part 578 (Continuum of Care Program).

## III. Prior Proposed Rules

On December 5, 2011, at 76 FR 75954, HUD published an interim rule which established the regulations for the Emergency Solutions Grants program and made conforming amendments to HUD's Consolidated Plan regulations at 24 CFR part 91, which included a definition of “chronically homeless.” HUD received 28 public comments on this definition of “chronically homeless.” The majority of the commenters raised concerns over HUD's clarification that “an occasion” must equal at least 15 days of living or

residing in a place not meant for human habitation, in a safe haven, or in an emergency shelter. In response to these concerns, HUD included a definition of “chronically homeless” that omitted this clarification in the Continuum of Care Program interim rule, published July 31, 2012, in the **Federal Register** (77 FR 45422) and HUD sought further comment on the definition of “chronically homeless.” At a convening held on May 30, 2012, HUD also solicited feedback from nationally recognized experts on a workable definition of “chronically homeless” which was described in the Rural Housing Stability Assistance Program proposed rule. After considering the 28 public comments submitted in response to the conforming amendments to the Consolidated Plan published with the Emergency Solutions Grants interim rule, the 42 comments submitted in response to the Continuum of Care Program interim rule, and the feedback solicited at the convening of nationally recognized experts, HUD determined to propose for public comment a revised definition of “chronically homeless.”

On March 27, 2013, HUD published a proposed rule at 78 FR 18726 that would establish the regulations for the Rural Housing Stability Assistance Program. In addition to proposing the regulations that would govern this program, the Rural Housing Stability Assistance Program proposed rule submitted for public comment a further revised definition of “chronically homeless.” The public comment period for the definition of “chronically homeless” closed on May 28, 2013, and these public comments and HUD's responses to these comments are addressed later in this preamble.

## IV. Overview of the Final Rule—Key Clarifications

In the Rural Housing Stability Assistance Program proposed rule, HUD defined a chronically homeless person as follows:

1. An individual who:
  - Is homeless and lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and
  - Has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least 1 year or on at least four separate occasions in the last 3 years, where the cumulative total of the four occasions is at least one year. Stays in institutions of 90 days or less will not constitute as a break in homelessness, but rather such stays are included in the cumulative total; and

- Can be diagnosed with one or more of the following conditions: Substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act of 2000 (42 U.S.C. 15002)), post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability;

2. An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility for fewer than 90 days and met all of the criteria in paragraph (1), before entering that facility; or

3. A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1), including a family whose composition has fluctuated while the head of household has been homeless.

After reviewing the public comments, which are discussed in Section IV of this preamble, and upon HUD's further consideration of concerns related to the proposed definition of “chronically homeless,” the following highlights the changes that are made by this final rule.

*The cumulative total of the length of homelessness spent living in a place not meant for human habitation, a safe haven, or in an emergency shelter must be at least 12 months.* The final rule provides that a person must have been homeless and living in a place not meant for human habitation, a safe haven, or in an emergency shelter for a period of at least 12 months as opposed to “one year.” This includes a provision that where a person has experienced at least four occasions of homelessness living in a place not meant for human habitation, a safe haven, or in an emergency shelter over a period of 3 years, the cumulative total of the occasions must total at least 12 months as opposed to “one year.” While the requirement is essentially the same as that which was included in the Rural Housing Stability Assistance Program proposed rule, the change clarifies HUD's intent for less burdensome recordkeeping requirements, as discussed in Section IV of this preamble.

*Establishing a break in homelessness.* The final rule provides that a break in homelessness spent living in a place not meant for human habitation, a safe haven, or in an emergency shelter is considered to be any period of 7 or more consecutive nights where an individual or family is not living or residing in such a place. Stays in an institutional care facility (e.g., a jail, substance abuse

or mental health treatment facility, hospital, or other similar facility) for fewer than 90 days and where the individual or family had been living in a place not meant for human habitation, a safe haven, or in an emergency shelter immediately before entering the institutional care facility will not constitute as a break.

*Establish clear recordkeeping requirements.* The final rule provides recordkeeping requirements at 24 CFR part 578 to help recipients and subrecipients of Continuum of Care Program funds understand the evidence that must be kept in the program participant file in order to demonstrate that an individual or family met the definition of “chronically homeless” at the point of entry into a program, when required. In general, the recordkeeping requirements establish HUD’s preferred order of documentation; provide clarity about how the length of time of homelessness spent living in a place not meant for human habitation, a safe haven, or in an emergency shelter must be documented; and provide documentation standards for documenting disability.

*Technical and additional clarifying changes.* In addition to the changes highlighted above, this final rule also includes technical and minor clarifying changes to certain proposed regulatory provisions. Several of these changes are in response to requests by commenters for clarification, and are further discussed in Section IV of this preamble. HUD’s response to public comments identifies where the final rule makes these changes.

## V. Discussion of the Public Comments

### A. The Comments, Generally

The public comment period on the definition of “chronically homeless” portion of the Rural Housing Stability Assistance Program proposed rule closed on May 28, 2013, and HUD received 177 public comments related to this definition. HUD also received 23 comments for the Rural Housing Stability Assistance Program proposed rule unrelated to the definition of “chronically homeless” and will respond to those comments in the final rule for the Rural Housing Stability Assistance Program. Regarding the public comments on the definition of “chronically homeless,” HUD received comments from a variety of sources: Advocacy groups, service providers, case managers, State and local government agencies, nonprofit organizations, private companies, and private citizens.

General concerns most frequently expressed by commenters about the proposed definition were: (1) The length of time an individual or family must be homeless and living in a place not meant for human habitation, a safe haven, or in an emergency shelter based on the proposed definition was too long and would require households to experience longer periods of homelessness in order to qualify as chronically homeless, and (2) documenting chronically homeless status based on the proposed definition would be too burdensome.

Regarding the first concern, it is not HUD’s intent to make an individual or family experience a longer period of homelessness. Rather, HUD’s primary intent is to align the period of time of those experiencing occasional homelessness with that of those who are experiencing continuous homelessness. This will also ensure that individuals and families who *already meet* these criteria are prioritized for assistance, that recipients and subrecipients can demonstrate to HUD that they are complying with the requirements established by HUD, and that HUD is able to make its required reports to Congress. Where there are no persons within a Continuum of Care that meet the definition of “chronically homeless,” permanent supportive housing beds that are required through their grant agreement to serve this population may serve other vulnerable and eligible households. HUD will provide guidance to assist communities on which populations to prioritize when there are no persons that meet the definition of “chronically homeless” established in this rule.

Regarding the second concern, it is critical to note that recipients of Continuum of Care Program-funded permanent supportive housing projects with one or more beds that are required through a grant agreement to serve individuals and families experiencing chronic homelessness have always been required to document the chronically homeless status of program participants that will occupy those beds, at the point of program entry. Failure to maintain appropriate documentation of a household’s eligibility is the monitoring finding that most often requires recipients of HUD funds to repay grant funds. HUD recognizes that not including recordkeeping requirements for documenting chronically homeless status in the regulatory text of the Rural Housing Stability Assistance Program proposed rule resulted in some confusion about HUD’s expectations and resulted in a number of commenters raising concerns that recordkeeping

requirements would be overly burdensome for those recipients. Therefore, this final rule includes, in the regulatory text, recordkeeping requirements to assist Continuum of Care Program recipients in appropriately documenting chronically homeless status that take into consideration that documenting the length of time homeless will be challenging. In addition, HUD notes that the revised Homeless Management Information System Data Standards published in May 2014 include data elements that are aligned with this definition in order to more easily allow for chronically homeless persons to be identified through the Continuum of Care’s Homeless Management Information System.

### B. The Definition of “Chronically Homeless” in 24 CFR Parts 91 and 578

#### The Comments Generally

*Comment:* Concern that the expert panel was mainly composed of researchers and not practitioners. Several commenters expressed disappointment that the expert panel hosted by HUD to develop the proposed definition of “chronically homeless” was composed mostly of researchers and not practitioners or technicians. These commenters recommended that HUD invite stakeholders responsible for service delivery to such discussions prior to final rulemaking.

*HUD Response:* Although several of the experts that participated in the convening were researchers, HUD also included several practitioners. As stated in the summary of the convening, posted at [www.hudexchange.info/rhsp](http://www.hudexchange.info/rhsp), the group of experts included researchers, advocates, homeless services providers, and homelessness technical assistance providers, as well as Federal representatives from HUD, the United States Interagency Council on Homelessness, and the U.S. Department of Health and Human Services. In addition, by publishing the definition of “chronically homeless” one more time as a proposed definition, HUD provided a third opportunity for stakeholders responsible for service delivery and reporting to submit their comments on the proposed definition of “chronically homeless.”

*Comment:* Definition of “chronically homeless” should have been issued separately from the Rural Housing Stability Assistance Program proposed rule. A few commenters stated that in order to solicit the most comments on the definition of “chronically homeless,” requesting comments on the definition of “chronically homeless”

should have been a separate notice from the Rural Housing Stability Assistance Program proposed rule since the definition will apply to all programs authorized by the statute.

HUD Response: HUD's proposed rule on the Rural Housing Stability Assistance Program offered an opportunity to further solicit public comment on HUD's definition of "chronically homeless." HUD first introduced the definition of "chronically homeless" as part of its "Emergency Solutions Grants program and Consolidated Plan Conforming Amendments interim rule," not as a stand-alone rule on defining chronically homeless. Although HUD did not solicit public comment on specific aspects of the definition of "chronically homeless" in its Continuum of Care Program rule, HUD did address the definition in that rule, and informed interested parties of its intent to solicit further public comment. As the commenters note, the definition of "chronically homeless" applies to all of HUD's homeless assistance programs. Soliciting comments on HUD's proposed definition in connection with solicitation of comments on the Emergency Solutions Grants program interim rule or on the Rural Housing Stability Assistance Program rule did not diminish the importance of this definition, but rather underscored the significant role that this definition will have in each of these programs, and underscores the value that HUD placed on receiving public comment on this definition. Although HUD did not issue the definition of "chronically homeless" as a stand-alone proposed rule, it is HUD's intent to issue a final rule solely on the definition.

Comment: HUD needs to account for estimated hours and costs to service providers trying to meet requirements of the definition. A few commenters requested that HUD account for the total estimated hours and financial costs it would take service providers to complete the requirements of this rule.

HUD Response: This final rule establishes the final definition of "chronically homeless" by incorporating the definition into 24 CFR parts 91 and 578. HUD requires Continuum of Care Program recipients of permanent supportive housing that are required to serve persons experiencing chronic homelessness to determine and document that any individual or family assisted meets the definition of "chronically homeless" as defined in this final rule. Each recipient must obtain documentation of homeless status, disability, and the specific period of time the individual or head of

household was living in an emergency shelter, safe haven, or place not meant for human habitation. The burden for collecting the required homeless status and disability information was considered in the burden estimates for the Continuum of Care Program interim rule (77 FR 45421). The public had the opportunity to provide comments on those estimates during the public comment period. In some instances, the documentation obtained under the existing burden of the Continuum of Care Program interim rule will already meet the standards for documenting the length of time an individual or head of household resided in a place not meant for human habitation, an emergency shelter, or a safe haven as required in this rule. In other instances, recipients and subrecipients may need to spend more time acquiring the documents necessary to show that an individual meets the timeframe necessary residing in a place not meant for human habitation, an emergency shelter, or a safe haven to qualify as "chronically homeless." See Section VI, Information Collection Requirements, for more information about HUD's change to its existing recordkeeping and reporting requirements.

#### Comments Related to Data Collection and Reporting

Comment: Problems in reporting such information in Homeless Management Information Systems. Several commenters expressed concerns about how to document and report chronically homeless status in their Homeless Management Information System. One commenter pointed to the variations across the country around how chronic homelessness is reported in the Homeless Management Information System and noted that Continuums of Care would not be able to uniformly and accurately document homelessness spent living in a place not meant for human habitation, a safe haven, or in an emergency shelter over a 3-year period in their Homeless Management Information Systems. Other commenters stated that many Homeless Management Information Systems are closed and do not share information with other Continuums of Care, which could create a problem in documenting chronically homeless status for homeless persons moving between Continuums of Care. Another commenter expressed concern that data entry personnel and case managers do not have the expertise to determine whether a person meets the criteria to be classified as chronically homeless, and concern about the time service providers would spend on data entry rather than on providing services.

Further, the commenter requested that HUD improve the Homeless Management Information System and the data entry process and establish data elements to capture a person's chronically homeless status.

HUD Response: HUD acknowledges that Homeless Management Information Systems across the country do not always collect data on chronically homeless status uniformly. HUD believes that the promulgation of its definition of "chronically homeless" will assist communities in collecting consistent data. HUD also included specific data elements in the 2014 Homeless Management Information System Data Standards to allow for uniform data collection on chronically homeless status. These data standards take into account that not all chronically homeless persons have a service interaction with the Continuum of Care's Homeless Management Information System and allow for history of homelessness to be documented based on the information provided by the program participant. It should also be noted that it is not HUD's expectation that the person entering data into the Homeless Management Information System also be responsible for determining program eligibility.

Comment: Proposed definition impedes ability to compare data. Many commenters expressed concerns that the new definition of "chronically homeless" would impede their ability to compare current and future data with data from previous years. A few commenters stated that the new definition would hinder efforts to measure "real" progress in reducing the chronically homeless population, as data would not be comparable.

HUD Response: HUD acknowledges that the change in the definition of "chronically homeless" may mean that the number of persons experiencing chronic homelessness within a community may change as a result of the new definition. However, this more detailed definition is necessary in order to ensure that communities are consistently using the same criteria when considering whether a person is chronically homeless. A uniformly applied definition also serves to ensure that HUD has more consistent and accurate information. Previously, communities used various standards for the length of time to define an "episode" for a person to be considered chronically homeless, which made it difficult for HUD to compare data nationally. The definition of "chronically homeless" in the final rule will ensure consistency in the data nationwide. HUD notes that this will

only affect the number of persons considered to be chronically homeless and not the Continuum of Care's total homeless count.

Comments Related to Community Strategies To Serve the Chronically Homeless, Including Eligibility for Housing Resources

Comment: A narrow definition of "chronically homeless" will result in an increase in vacancies in units designated for the chronically homeless and individuals and families spending a longer time in a place not meant for human habitation. Several commenters expressed concerns that the more narrow definition of "chronically homeless" included in the proposed rule would result in an increase in vacant units otherwise dedicated to the chronically homeless. Several commenters suggested that they would have difficulty locating individuals or families who meet the criteria of the proposed definition.

One commenter expressed concern that the proposed definition would affect local and State governments, in addition to homeless individuals, stating that the new definition would result in more people being on the street for longer periods of time resulting in the following: an increased demand for emergency shelters, a burden on local police services since more individuals would be in unstable situations, and a decrease in property values. The commenter suggested that HUD phase in the new definition over a few years by incrementally increasing the cumulative episode threshold in order to provide localities time to plan their budgets and give homeless individuals time to adjust their expectations.

Another commenter requested guidance on what providers with dedicated permanent supportive housing beds should do if they are unable to locate persons that meet this definition.

Several commenters recommended that HUD establish a "tiering system" where communities that are unable to identify people who meet requirements for "chronically homeless" may target permanent supportive housing for other vulnerable homeless persons. Similarly, other commenters recommended that HUD consider a prioritization policy for homeless individuals eligible for permanent supportive housing and remove the requirement that 100 percent of new permanent supportive housing units be designated for the chronically homeless.

HUD Response: HUD recognizes that the definition of "chronically homeless" is not inclusive of all vulnerable

homeless populations; however, HUD has intentionally focused the definition of "chronically homeless" on those persons with the longest histories of homelessness and with the highest need and believes that this is a reasonable implementation of the statutory requirements established in section 401 of the McKinney-Vento Act. The definition is not intended to require individuals and families to have longer periods of homelessness before being served; rather, the definition allows for persons who already meet such criteria to be prioritized for Continuum of Care Program-funded permanent supportive housing dedicated to persons experiencing chronic homelessness.

In addition, HUD published guidance<sup>1</sup> to clarify that, to the extent that there are no persons who meet the criteria of chronic homelessness included in this rule, Continuum of Care Program-funded dedicated permanent supportive housing providers are not required to keep a unit vacant. Instead, the recipient may house non-chronically homeless individuals or families who are eligible for permanent supportive housing generally and are encouraged to prioritize those homeless individuals or families who are the most vulnerable or at risk of becoming chronically homeless.

Comment: Definition does not target those with longest histories and most severe cases of homelessness. One commenter stated that the proposed definition of "chronically homeless" does not target those with the longest histories and most severe cases of homelessness, such as those with histories of homelessness that have four or more episodes in more than the past 3 years.

HUD Response: HUD recognizes that there are individuals and families with long histories of homelessness that may not meet the definition of "chronically homeless" included in the final rule. For example, individuals and families who have been homeless and living in a place not meant for human habitation, a safe haven, or in an emergency shelter for 12 months or longer in the past 3 years but where there were fewer than four distinct occasions and the current occasion lasted less than 12 months would not be considered chronically homeless. However, because the

statutory definition of "chronically homeless" requires at least four occasions over a 3-year time frame, the number of occasions necessary to be considered chronically homeless cannot be changed. Individuals or families who have longer histories of homelessness spent living a place not meant for human habitation, a safe haven, or in an emergency shelter and who have experienced at least four occasions in the last 3 years are considered chronically homeless so long as the adult head of household (or minor head of household where no adult is present) has a disability as required by the definition. However, an individual or family who has a history of homelessness spent living in a place not meant for human habitation, a safe haven, or in an emergency shelter where the period of homelessness has not totaled 12 months either continuously or over a period of at least four occasions in the past 3 years would not be considered chronically homeless. For this reason, HUD has provided flexibility around what constitutes an occasion of homelessness and how to document the period of homelessness while still maintaining a uniform standard to ensure consistency across the country. HUD encourages recipients of Continuum of Care Program-funded permanent supportive housing not dedicated to the chronically homeless to prioritize persons that are most at risk of becoming chronically homeless and who are the most vulnerable.

Comment: Periods of homelessness do not automatically correlate to need. A commenter stated that those who have been homeless for shorter, sporadic periods of time that do not cumulatively total 365 days might be more physically and mentally prepared to use permanent supportive housing than those who have had longer episodes of homelessness. Similarly, one commenter stated that a longer length of time spent homeless does not necessarily indicate a higher level of need, and those who have been homeless for shorter periods might make better use of housing services.

HUD Response: HUD has determined that the definition of "chronically homeless" in section 401 of the McKinney-Vento Act should define those persons as chronically homeless that have had the longest histories of homelessness and highest need. The definition of "chronically homeless" set forth in 24 CFR parts 91 and 578 intentionally narrows the statutory definition to further ensure that limited resources targeted to this population are used to serve persons with the longest histories of homelessness and highest need. HUD acknowledges that there are

<sup>1</sup> Notice CPD-14-012: Prioritizing Persons Experiencing Chronic Homelessness in Permanent Supportive Housing and Recordkeeping Requirements for Documenting Chronic Homeless Status. Available at: <https://www.hudexchange.info/resource/3897/notice-cpd-14-012-prioritizing-persons-experiencing-chronic-homelessness-in-psh-and-recordkeeping-requirements/>.

other factors that might also correlate to need, however, length of time residing in emergency shelters, safe havens, and places not meant for human habitation is one factor of need, and when combined with the statutory requirement that the head of household have a disabling condition, HUD has determined that it effectively defines those persons with the highest needs as chronically homeless. Therefore, the definition of “chronically homeless” included in this final rule maintains the requirement that was included in the Rural Housing Stability Assistance Program proposed rule, that the four or more separate occasions of homelessness living in a place not meant for human habitation, a safe haven, or in an emergency shelter must total 12 months or include additional criteria related to vulnerability. HUD also recognizes that persons meeting the definition of “chronically homeless” included in the final rule may require a higher level of support in order to obtain and maintain housing. Not all permanent supportive housing is limited to serving persons that meet the definition of chronically homeless. HUD has encouraged Continuums of Care and recipients of Continuum of Care Program-funded permanent supportive housing to take other factors, such as vulnerability, into account when prioritizing households for permanent supportive housing.

Comment: Require jurisdictions to produce a plan to specifically address dealing with chronic homelessness. A commenter stated that every region in the country should be required to have a plan that deals directly with the chronically homeless to show proof that they have worked on the issue through a statement with a local provider.

HUD Response: Each Continuum of Care submits its plan for addressing chronic homelessness through the Continuum of Care Application submitted under each Notice of Funding Availability for the Continuum of Care Program. This requirement will continue to be addressed through the Continuum of Care Program Competition; therefore, no additional requirements have been added to the final rule. In addition, each Consolidated Plan jurisdiction is required to develop a homeless strategy and this strategy must address the needs of, and resources available to, chronically homeless persons. This requirement will continue to be addressed through the Consolidated Plan requirements at 24 CFR part 91.

#### Comments Related to the Definition

Comment: Adhere to the definition of “chronically homeless” included in the conforming amendments to the Consolidated Plan published with the Emergency Solutions Grants program interim rule. Several commenters stated that they preferred the definition of “chronically homeless” that was included in the conforming amendments to the Consolidated Plan published with the Emergency Solutions Grants program interim rule, which defined a homeless occasion as a period of at least 15 days.

HUD Response: The majority of public comments received on the definition of “chronically homeless” that was included in the conforming amendments to the Consolidated Plan published with the Emergency Solutions Grants program interim rule related to the requirement that to be considered an “occasion” a period of homelessness had to be a period of at least 15 days. Several commenters stated that the period of 15 days to define an “occasion” was arbitrary and was not the ideal definition. Upon review of these comments, HUD concluded that the 15-day standard did not effectively target persons with the longest histories of homelessness and highest level of need. The definition in the conforming amendments to the Consolidated Plan published with the Emergency Solutions Grants interim rule would have allowed for an individual or family experiencing occasions of homelessness to be considered chronically homeless within a period of as few as 65 days, while persons experiencing homelessness without a break would have to be homeless and residing in a place not meant for human habitation, in a safe haven, or an emergency shelter for at least 1 year. Consistent with research,<sup>2</sup> HUD has determined that requiring 1 year (12 months) of homelessness living in a place not meant for human habitation, a safe haven, or an emergency shelter will ensure that the definition focuses on those persons with the longest histories of such homelessness and highest needs. The definition included in this final rule allows for limited resources to be effectively targeted and does not adopt the definition originally published in 24 CFR part 91.

Comment: Use “vulnerability index” to measure chronic homelessness. Several commenters proposed

alternative definitions for targeting the homeless population most in need of permanent supportive housing. Several commenters recommended that HUD replace the proposed definition of “chronically homeless” with “homeless persons determined to be vulnerable through the application of a standardized vulnerability index tool” that would be developed with stakeholders. These commenters also stated that homeless persons could be assigned spots on a community’s “vulnerability list” so those most in need of services could be identified.

HUD Response: HUD agrees that it is important to consider a person’s vulnerability or the severity of a person’s needs when determining housing placement; however, the statutory definition of “chronically homeless” does not permit HUD to adopt the definition proposed by the commenters. HUD recognizes that individuals and families should be prioritized for permanent supportive housing under the Continuum of Care Program based on the severity of their needs. To this point, HUD has provided guidance to recipients of all Continuum of Care Program-funded permanent supportive housing encouraging Continuums of Care and permanent supportive housing providers to take other factors, such as vulnerability, into account when prioritizing households for permanent supportive housing.

Comment: Allow communities to define “chronically homeless” locally. A commenter suggested that establishing a global definition of “chronically homeless” has limitations and that communities should be encouraged to set their own “prioritization benchmarks” based on local conditions.

Another commenter recommended that the term “chronic” is a medical term, and is not an appropriate term to measure severity of homelessness, and suggested that HUD allow local Continuums of Care to submit their own definitions based on people with serious health conditions who have experienced multiple and/or long episodes of homelessness.

Finally, another commenter suggested that HUD provide rural communities the flexibility to determine what is meant by “not meant for human habitation” since many of these communities do not have condemnation procedures like those often used by urban areas.

HUD Response: The definition of “chronically homeless” in section 401 of the McKinney-Vento Act provides the basis for the definition of “chronically homeless” set forth in 24 CFR parts 91 and 578. Although the Act does allow

<sup>2</sup>Thomas Byrne and Dennis P. Culhane. “Testing Alternative Definitions of Chronic Homelessness” *Psychiatric Services* 66.5 (2015). Available at: [http://works.bepress.com/dennis\\_culhane/146](http://works.bepress.com/dennis_culhane/146).

HUD the discretion to allow communities to define certain terms such as “not meant for human habitation” locally. HUD has determined that all Continuums of Care must use the same standard when determining whether or not an individual or family is chronically homeless. Using a universal standard will also allow HUD to track progress, nationally, on the goal of ending chronic homelessness.

**Comment:** Include individuals and families who meet the McKinney-Vento Homeless Assistance Education Act in the definition of chronically homeless. A commenter stated that individuals or families who meet the McKinney-Vento Homeless Education Act definition of “homeless” should also be considered chronically homeless.

**HUD Response:** The definition of “chronically homeless” included in this final rule reflects the statutory definition in section 401 of the Act. The statutory definition provides specific minimum criteria that an individual or family must meet in order to be defined as chronically homeless. Although HUD has the discretion to make the definition of “chronically homeless” more narrow in the final rule, the definition must include the minimum statutory requirements. Further, it is HUD’s intention to ensure that the definition of “chronically homeless” targets those persons with the longest histories of homelessness who have been living in a place not meant for human habitation, a safe haven, or in an emergency shelter. Therefore, HUD has chosen to not change the final rule to include all individuals and families who meet the definition in section 725(2) of the McKinney-Vento Act. HUD recognizes that there are vulnerable populations who are not included in this definition of “chronically homeless.” The definition of “chronically homeless” is not intended to include all vulnerable populations.

**Comment:** HUD should consider persons chronically at risk of homelessness the same as chronically homeless. A commenter suggested that HUD should treat “chronically homeless” and “chronically at risk of homelessness” as the same so that those who have not been able to maintain permanent supportive housing because of a loss of income due to a disability and inability to attain a permanent voucher are not penalized.

**HUD Response:** HUD recognizes that there are vulnerable populations who are not included in this definition of “chronically homeless”; however, defining chronically homeless more narrowly will allow limited resources to

be prioritized for persons with the longest histories of homelessness and who are most likely to have the most severe service needs, which is consistent with the requirements established in section 401 of the McKinney-Vento Act. The statute does not support defining persons who are “at risk of homelessness” (on a recurring basis or otherwise) as chronically homeless as these persons do not meet the definition of homeless or chronically homeless as set forth in the Act. HUD reminds stakeholders that individuals and families who meet the definition of at risk of homelessness might be eligible for homelessness prevention assistance under either the Continuum of Care Program, if the Continuum of Care is a High Performing Community, or the Emergency Solutions Grants program.

**Comment:** Provide for different definitional criteria for “chronically homeless” for youth and families with children. Several commenters suggested that the definition of “chronically homeless” should have different definitional criteria for families with children and youth than for adult individuals. One commenter suggested that there should be different cumulative time frames for individuals, families, and youth. Specifically, the commenter proposed, “that the definition be changed so that a chronically homeless individual is defined as one who is homeless for at least 1 year or for a cumulative total of 180 days in the previous 3 years over multiple occasions, a chronically homeless family is defined as one that is currently homeless and has moved multiple times in the previous 12 months, where an adult and/or child family member is involved with more than one public service system, and a category is added for chronically homeless youth, who would be currently homeless individuals under the age of 25 who have moved multiple times in the previous 6 months, and this pattern of housing instability can be expected to continue.”

**HUD Response:** The single statutory definition of “chronically homeless” is inclusive of individuals, families with children, and unaccompanied youth and sets a minimum threshold that must be met for any person, regardless of age or household composition. HUD strived to reasonably implement the statutory definition by clarifying in the regulation that, for family households, only the head of household must meet the criteria for individuals who are defined as chronically homeless. The definition in the regulation also allows for changes to family composition over time.

Beyond this clarification, creating a broader or less restrictive threshold for unaccompanied youth or families with children would undermine one of the goals of the “chronically homeless” definition, which is to help ensure that resources are focused on individuals and families with the longest experiences of homelessness spent living in a place not meant for human habitation, a safe haven, or in an emergency shelter. In addition, a person’s status as part of a family may change and a youth may become an adult during his or her time living in an emergency shelter, safe haven, or place not meant for human habitation. Therefore, a single definition helps ensure that an individual’s status does not change depending on whether he or she is part of a family at the time of intake or turns 25. Therefore, in the final rule, HUD has maintained that the standard for qualifying as chronically homeless is the same for all individuals, families with children, and unaccompanied youth. Families with children and unaccompanied youth, like single adults, who do not meet the criteria of chronically homeless might still meet the definition of “homeless” and if they do they are eligible for assistance under the Continuum of Care Program and Emergency Solutions Grants program.

**Comment:** Define family in the definition of “chronically homeless.” Several commenters sought clarification on how HUD defines “family” for the purposes of defining “chronically homeless.” One commenter asked that HUD define the term “family” in a manner consistent with how it is defined in the *Equal Access to Housing in HUD Program Regardless of Sexual Orientation or Gender Identity* final rule. Another commenter expressed confusion over whether a chronically homeless family must have a child under the age of 18. Another commenter stated that the term family is “misused to identify a demographic of a household and that the term “household” should be defined consistently with the proposed data standards.”

**HUD Response:** The proposed definition of “chronically homeless” did not define the term “family.” The *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity* final rule provides the following definition of “family” in 24 CFR 5.403 which applies to programs authorized under the Act. The definition “Family” includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital



status: (1) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; or, (2) A group of persons residing together, and such group includes, but is not limited to, a family with or without children, an elderly family, a near-elderly family, a disabled family, a displaced family, and remaining members of a tenant family.

This definition of “family” applies in both the Emergency Solutions Grants and Continuum of Care Program rules. The McKinney-Vento Act distinguishes individuals from families. Therefore, paragraph (1) of the definition of “family” under the Equal Access Rule is considered an individual for the purposes of the definition of “chronically homeless” included in this final rule. This means that a chronically homeless family is any group of persons presenting for assistance together, where the head of household meets all of the criteria established in this final rule, regardless of marital status, actual or perceived sexual orientation, or gender identity, with or without children and irrespective of age or relationship. A child who is temporarily away from the home because of placement in foster care is considered a member of the family.

Comment: Clarify that any family member who meets the criteria of chronically homeless can qualify the family as chronically homeless. A few commenters requested that any member of the family could make the entire family meet the definition of “chronically homeless.” A commenter recommended that HUD consider revising the definition of “chronically homeless” specifically to allow for a minor child in a family to qualify the family household as chronically homeless. Another commenter recommended only that the children, instead of the adult head of household, be able to have one of the listed disabling conditions and qualify the family as chronically homeless because the barriers a disability presents to an individual are similar to the barriers faced by a parent of a child with a disability. Similarly, one commenter proposed adding language to clarify that the members of a family household all qualify as chronically homeless based on the head of household regardless of changes within the household composition.

HUD Response: The statutory definition of “chronically homeless” dictates that the adult head of household (or minor head of household if there is no adult in the family) must meet the criteria set forth in the definition. Therefore, the final rule

cannot be revised from the proposed rule to allow for *any* household member besides the head of household to qualify the family as chronically homeless; this includes experiencing the occasion(s) of homelessness and being diagnosed with the disabling condition.

However, because it is the adult head of household who qualifies a family as chronically homeless, the whole family is considered chronically homeless even if the household composition changed during the course of the head of household’s homelessness. Language stating this was included in the proposed definition of “chronically homeless” and remains in the final definition of “chronically homeless.” For example, if an adult head of household has a qualifying disability and has been homeless continuously for 12 months and has been accompanied by another family member for only part of that time frame, the whole household meets the definition of a chronically homeless family.

Comment: Eliminate the requirement that to be chronically homeless an individual or family must experience four separate occasions of homelessness. Several commenters requested that HUD eliminate the requirement for four separate occasions of homelessness in favor of considering anyone that has been homeless for a cumulative total of 365 days over the past 3 years to be considered chronically homeless. One commenter stated that occasions are “too sloppy to define” and the concept is of little value.

HUD Response: HUD recognizes that the requirement for four or more separate occasions of homelessness over a 3-year period will not include individuals or families who have experienced only two occasions of homelessness over a 3-year period where the cumulative total is 12 months or greater. However, the requirement of four or more occasions is statutory and included in the definition of “chronically homeless” in the McKinney-Vento Act and, therefore, cannot be changed without a change to the statute. For this reason, HUD has provided maximum flexibility within the statutory framework about what constitutes a break between occasions and how to document the period of homelessness. In addition, HUD notes, for those stakeholders who submitted this comment because of concerns about these individuals and families not being eligible for needed resources, that the Continuum of Care and Emergency Solutions Grants programs fund a variety of housing and services for individuals and families who are

homeless, but do not meet the criteria of chronically homeless.

Comment: Include a cumulative time frame for the four or more occasions but make that time frame less than 1 year. Many commenters disagreed with the proposed rule’s cumulative length of time the four or more occasions must total in order for an individual or family to be considered chronically homeless. A few commenters proposed reducing the requirement from 1 year to 120 days. Several commenters suggested that the time frame should be reduced from 1 year to 6 months or 180 days. One commenter proposed that this 6-month time frame should apply to both occasional and consecutive periods of homelessness.

HUD Response: The statutory definition of “chronically homeless” requires individuals and families who meet the definition through a continuous occasion to have been homeless and living or residing in a place not meant for human habitation, safe haven, or in an emergency shelter for at least 1 year. The statute set a different standard for persons who experience frequent occasions of homelessness, requiring at least four occasions over 3 years. The statute was silent on what qualified as an occasion of homelessness. HUD has determined that requiring four or more occasions to total at least 12 months would set a threshold of need comparable to the requirement for a continuous episode. This will help ensure that resources that are dedicated to serving chronically homeless persons are targeted to individuals and families with the longest experiences of homelessness regardless of whether they meet the threshold for chronic homelessness through a continuous occasion or through multiple occasions.

Comment: For the cumulative time frame for four or more occasions, count the time in months as opposed to days. One commenter proposed that the definition be revised to count homeless occasions in terms of months and not days. Another commenter recommended that the actual number of days homeless need not be counted and a single encounter with a service provider on a single day in one month could count for homeless status for the entire month.

HUD Response: The definition of “chronically homeless” included in the proposed rule did not specify how the time frame should be counted and instead just stated that the cumulative total of occasions must total at least 1 year. HUD agrees with the comment that changing 1 year to 12 months helps provide clarification about how to count

an individual or family's time spent in places not meant for human habitation, in a safe haven or in an emergency shelter. Furthermore, since HUD did not include recordkeeping requirements in the proposed rule, it was not clear that HUD does not intend to make homeless service providers document every day of homelessness spent living in a place not meant for human habitation, a safe haven, or in an emergency shelter to equal 365 days, for either continuous or occasional homelessness. HUD agrees that counting in months instead of days is a more reasonable requirement for documentation purposes. In addition, HUD agrees with the comment that a single encounter with a homeless service provider on a single day within 1 month would be sufficient to count the individual or family as homeless for the entire month. HUD understands that there is not an Homeless Management Information System record for every interaction or for every day in which a person is homeless and did not want to create a recordkeeping requirement that was overly burdensome. This requirement has been clarified in the recordkeeping requirements; however, HUD has also added language stating that this does not apply if the provider has evidence of a break, defined as 7 or more consecutive nights not living in a safe haven or in an emergency shelter, or living in a place meant for human habitation, during that month. Again, this will help ensure that resources dedicated to persons experiencing chronic homelessness are targeted to individuals and families with the longest experiences of homelessness. When considering how to determine a break, HUD understands that people often find themselves with a place to stay for a couple of nights (hotel, with a friend, etc.), however, their primary nighttime residence is still a place not meant for human habitation, an emergency shelter, or a safe haven. HUD determined that up to 7 nights is a reasonable period of time for an individual or family to stay for a few nights in a place other than an emergency shelter, a safe haven, or in a place that is meant for human habitation without considering it a break in their total length of time homeless for purposes of determining chronically homeless status.

*Rule clarification.* To clarify that, for documentation purposes, the cumulative length of time of occasions must total 12 months instead of 365 days, the language in paragraph (1)(ii) of the definition of "chronically homeless" has been revised to provide that the homeless individual with a disability

has been homeless and living as described continuously for at least 12 months or on at least 4 separate occasions in the last 3 years, as long as the combined occasions equal at least 12 months and each break in homelessness separating the occasions included at least 7 consecutive nights of not living in a place not meant for human habitation. The definition further provides that stays in institutional care facilities for fewer than 90 days will generally not constitute as a break in homelessness, but rather such stays are included in the 12-month total.

In addition, to clarify the recordkeeping requirements related to paragraph (1)(ii), § 578.103(a)(4) has been revised to include language on how documenting a single encounter within 1 month is sufficient documentation to count the individual or family as homeless for the entire month.

*Comment:* Give discretion to Continuums of Care to determine the length of the occasions of homelessness. Several commenters suggested that Continuums of Care should be provided with the flexibility to determine when an individual or family is chronically homeless and whether they have been homeless at least four times over the past 3 years.

*HUD Response:* In order to ensure that Continuums of Care nationwide are defining chronically homeless consistently for counting, eligibility, and reporting purposes, it is necessary to have one uniform definition of "chronically homeless" that applies nationwide. A uniform definition will allow for data from each community to be compared nationally, and that persons with the longest histories of homelessness who have been living in a place not meant for human habitation, a safe haven, or in an emergency shelter and with the most severe service needs are prioritized for assistance in permanent supportive housing. As more communities meet the Administration's goal of ending chronic homelessness, HUD will use the annual Continuum of Care Program Competition Notice of Funding Availability to reflect changes in priorities. However, the definition of "chronically homeless" will not change, as it is meant to encompass those homeless persons with the longest histories of living in places not meant for human habitation, in a safe haven, or in emergency shelters and who have the most severe service needs, and to the extent that there are persons that meet this criteria within a Continuum of Care they should always be counted and be prioritized for assistance.

*Comment:* Need guidance on what constitutes as a break in homelessness. Many commenters requested guidance on what constitutes as a break in homelessness in order to distinguish between occasions. One commenter requested guidance on how to document such breaks in Homeless Management Information System. Another commenter suggested that temporary housing situations of less than 1 week not constitute as a break. Several commenters suggested that periods of "couch surfing" should not constitute as a break in homelessness.

*HUD Response:* HUD agrees that in order to accurately document occasions of homelessness, it is necessary to understand and document the housing situation that ended the occasion; therefore, HUD has clarified in the recordkeeping requirements that a break in homelessness is any period of 7 or more consecutive nights where the individual or family is not residing in a safe haven, or in an emergency shelter or is residing in a place meant for human habitation. In addition, the final rule allows for stays in an institutional care facility where the individual has been residing for fewer than 90 days to not constitute as a break in homelessness either. HUD provided this clarification because of a comment provided through the comment process on the Continuum of Care Program interim rule recognizing that many hard-to-serve chronically homeless individuals and families have an opportunity to spend 1 or 2 nights on someone's couch, in a motel using all or most of the beneficiary's monthly Social Security Income or Social Security Disability Income check, in another location that allows them to briefly not sleep in a place not meant for human habitation, in an emergency shelter, or in a safe haven. HUD does not consider these periods of less than 7 nights a break in homelessness. Instead, these days would be counted towards a single occasion of homelessness living in a place not meant for human habitation, a safe haven, or in an emergency shelter. Only periods of 7 or more consecutive nights where the individual or family is not living in a place not meant for human habitation, in a safe haven, or in an emergency shelter would qualify as a break. Intake workers must follow the general recordkeeping standards of third-party evidence first, intake worker observation second, and self-certification of the head of household third, when documenting the break in homelessness.

*Rule Clarification:* Section 578.3 of the final rule includes language in paragraph (1)(ii) of the definition of

“chronically homeless” that clarifies that a break is considered to be 7 or more consecutive nights where the individual or family is not living in a place not meant for human habitation, in a safe haven or in an emergency shelter.

Comment: Stays in living situations other than the streets, emergency shelters, or safe havens should be included in places an individual or family can reside and still meet the definition of “chronically homeless.” Several commenters suggested that HUD consider expanding the definition to allow for individuals and families in certain living situations to be considered chronically homeless. Numerous commenters suggested that individuals and families who have been living in “doubled up” situations should qualify as being chronically homeless. One commenter stated that periods spent “doubled up” should be counted if the individual or family moves two or more times within 60 days. Another commenter suggested that in addition to periods of living in “doubled up” situations, the definition should also include those living in unsuitable housing for long periods of time, such as old mobile homes or cabins without electricity and sewage. Another commenter suggested that the definition include “a person or family who does not have a permanent residence AND has moved two or more times in the past 60 days.”

Several commenters asked HUD to consider stays in transitional housing towards a person’s homeless history when determining an individual or family’s chronically homeless status. The commenters had various suggestions about how such stays could be incorporated. One commenter suggested that stays of 90 days or less in transitional housing should not constitute as a break. Similarly, another commenter asked HUD to consider including transitional housing programs in the definition of “institutional care facility,” which would allow stays in transitional housing for 90 days or less to not constitute as a break in homelessness. Another commenter proposed that the definition be expanded so that persons who have been living in transitional housing, for any period of time, may also be considered chronically homeless. Finally, one commenter was concerned that excluding time in transitional housing would disadvantage homeless veterans who would otherwise be eligible for the HUD-Veterans Affairs Supportive Housing (HUD-VASH) program because many of those veterans

are initially housed in transitional housing.

HUD Response: HUD has interpreted the criteria in paragraphs (1) and (2) of the statutory definition by clarifying that short-term stays in institutional care facilities do not count as breaks in homelessness. HUD believes this clarification is supported by the widespread and longstanding recognition that persons experiencing chronic homelessness frequently cycle between short-term stays in institutional care facilities and emergency shelters, safe havens, and places not meant for human habitation. HUD also believes this widespread and longstanding recognition is implicit in paragraph (2) of the statutory definition, which allows certain individuals to qualify as chronically homeless even if they currently live in an institutional care facility, as opposed to an emergency shelter, safe haven, or place not meant for human habitation. There is nothing in the statutory definition to suggest that certain people should qualify as chronically homeless even if they are currently living in transitional housing or in “doubled up” locations as opposed to emergency shelters, safe havens, or places not meant for human habitation. Therefore, HUD has decided not to expand the qualifying residences beyond the places explicitly mentioned in paragraphs (1) and (2) of the statute.

Regarding HUD-VASH, specifically, the U.S. Department of Veterans Affairs (VA) determines chronic homeless status at the initial intake to VA homeless services. Therefore, veterans who qualify as chronically homeless at initial intake will maintain that status throughout the episode of care, even if they are served in a VA program that is characterized as transitional housing immediately prior to entry into HUD-VASH.

Comment: Clarification of how the word “continuously” is defined in the phrase “continuously homeless for at least one year.” A commenter asked how HUD is defining the word “continuously” in the phrase “continuously homeless for at least one year” in the definition of “chronically homeless.”

HUD Response: HUD has clarified that a break in homelessness is defined as 7 or more consecutive nights in a place that does not qualify as a place not meant for human habitation, a safe haven, or an emergency shelter and, therefore, does not consider it to be necessary to define the word “continuously.”

Comment: Clarification is needed on “conditions” versus “disability.” Several commenters wrote about

paragraph (1)(iii) in the proposed rule’s definition of “chronically homeless,” which provides that a chronically homeless person is a person who can be diagnosed with one of the following conditions: “substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002)), post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability.”

Commenters asked for clarification on what constitutes a “condition.” Other commenters asked about the specific list of “conditions” included in the definition. One commenter asked why the term “serious mental illness” is used instead of “severe and persistent mental illness,” while another commenter asked why “post-traumatic stress disorder” was included here but not in the definition of “disability” included in the McKinney-Vento Act. Other commenters referenced the Homeless Management Information System Data Standards and recommended that they be consistent.

Another commenter suggested that the language be revised to say that a chronically homeless person is a person who *has been* diagnosed with a condition as opposed to saying *can be* diagnosed, so that it is more definitive.

Finally, one commenter said that the requirement to have a disability determination for each of the identified disabilities will cause an underreporting of disabilities, which will result in an underreporting of chronic homelessness.

HUD Response: The language included in the proposed definition of “chronically homeless” regarding the types of conditions a person must have in order to qualify as chronically homeless comes from the statute. HUD analyzed the list of conditions included in the statute in comparison with those included under the definition of “homeless individual with a disability” under the Act and determined that each of the “conditions” included under the statutory definition of “chronically homeless” are also included under the definition of “homeless individual with a disability.” Because an individual with one or more of the “conditions” included under the statutory definition of “chronically homeless” would qualify as a “homeless individual with a disability” under the Act, and because HUD wants to clarify that chronically homeless individuals and families are eligible for permanent supportive housing, which under the Continuum of Care Program interim rule means

“permanent housing in which supportive services are provided to assist homeless persons with a disability to live independently,” HUD has replaced the list of “conditions” found in the proposed rule with the requirement that an individual must meet the definition of “homeless individual with a disability” in the Act. In addition, HUD has added to the Continuum of Care Program interim rule recordkeeping requirements for documenting the disability, and has created standards for collecting information on disability in the Homeless Management Information System Data Standards that are consistent with this definition.

Regarding the comment related to the phrase “can be diagnosed” found in the proposed rule, HUD decided to replace the list of “conditions” found in the proposed rule with the requirement that an individual must meet the definition of “homeless individual with a disability” in the Act. Therefore, the phrase “can be diagnosed” is not found in the final rule. It should be noted, however, that for the purposes of recordkeeping, the final rule permits evidence of a disability to be documented using an intake staff-recorded observation of disability that, no later than 45 days of the application for assistance, is confirmed and accompanied by evidence in 24 CFR 578.103(a)(4)(i)(B)(1), (2), (3), or (5).

Finally, regarding the last comment, there is no such “requirement to have a disability determination for each of the identified disabilities.” An adult head of household is only required to meet the definition of “homeless individual with a disability” as defined in section 401(9) of the McKinney-Vento Act in order to meet the definition of “chronically homeless” and the recipient is only required to keep on file evidence of the qualifying disabling condition as HUD has clarified in the recordkeeping requirements.

*Rule Clarification:* To provide for a more uniform definition, this final rule revised the language in paragraph (3) of the definition of “chronically homeless” to state that to be considered chronically homeless a family must have an adult head of household (or a minor head of household if no adult is present in the household) who meets the criteria of “homeless individual with a disability” as defined in section 401(9) of the McKinney-Vento Act.

*Comment:* The definition of “chronically homeless” should include an income variable. A commenter recommended that HUD add an income variable as an indicator of chronic homelessness.

*HUD Response:* HUD disagrees with this recommendation. The statute does not include an income variable for either the definition of “homeless” or “chronically homeless” and HUD does not seek to expand either definition to include this component.

*Comment:* Provide guidance on what is meant by “institution.” One commenter stated that HUD should provide clear guidance on what constitutes an “institution.” Other commenters suggested that HUD include foster care in the definition of an institution and clarify that temporary placement in child welfare systems and foster care should constitute as a break in homelessness.

*HUD Response:* HUD acknowledges that clarification of institutional care facility is necessary, however, rather than establishing a fixed set of institutional care facilities in the final rule, HUD intends to issue guidance on the meaning of “institutional care facility.”

*Comment:* Consistently refer to stays in institutions that do not constitute as a break in homelessness for purposes of defining “chronically homeless” as either “90 days or less” or “fewer than 90 days.” One commenter stated that HUD should be consistent when referencing institutional stays because “90 days or less” in paragraph (1)(ii) of the definition is not the same as “fewer than 90 days” in paragraph (2) of this definition.

*HUD Response:* HUD agrees that the language around stays in an institution included in the proposed definition was inconsistent. The definition in this rule has been revised to clarify that an individual can be considered chronically homeless if they are residing in or have a history of residing in an institution for fewer than 90 days, where the individual or family resided in a place not meant for human habitation, in a safe haven, or in an emergency shelter immediately prior to entering the institution.

*Rule clarification:* HUD has revised the definition of “chronically homeless” to state that a homeless individual with a disability may be considered to be chronically homeless if they live in an institutional care facility, as long as the individual has been living there for fewer than 90 days and had been living in a place not meant for human habitation, a safe haven, or an emergency shelter prior to entering the institutional care facility.

*Comment:* Define residence in institutional care facility as present and not past residence. A commenter suggested that HUD change the wording in paragraph (2) of the definition from

“An individual who has been residing in an institutional care facility. . .” to “An individual who is residing in an institutional care facility. . .”

*HUD Response:* HUD disagrees that this rewording is necessary. The phrase “has been residing in an institutional care facility” encompasses both the recent past and the current living situation of the individual and describes persons who are currently living or residing in an institutional care facility and whose total current stay in that facility will be fewer than 90 days.

*Comment:* Difficulty in documenting periods of homelessness. Many commenters expressed concern that it would be difficult to document or verify the time period of homelessness required in the proposed definition of “chronically homeless.” Some commenters stated that it would be difficult to verify where homeless individuals or families have slept if the individual or family had not had regular interaction with a homeless service provider. Other commenters stated that chronically homeless individuals and families would not be able to remember or provide documentation for the exact period of time during which they had been homeless. Several commenters suggested that self-certification by the head of household of homeless status should be sufficient for documenting homeless status and history. Many commenters expressed concern that the requirement to track and verify cumulative lengths of homelessness would place an undue burden on homeless service providers, particularly in rural areas where there are fewer institutions or shelters. Commenters also requested that the final rule include specific guidance on how to document homeless status and history, particularly for persons that have been unsheltered. Finally, several commenters expressed concern that the definition would make counting chronically homeless persons in the Point-in-Time counts more difficult because enumerators will not have sufficient time to determine lengths of homelessness.

*HUD Response:* After reviewing the public comments, HUD acknowledges the lack of recordkeeping requirements for chronically homeless status in the proposed rule caused confusion and concern and HUD agrees it must provide specific guidance on documentation requirements for projects that are required to serve the chronically homeless. For this reason, the final rule includes a section on recordkeeping requirements. When creating the recordkeeping requirements, HUD acknowledged many of the potential difficulties expressed by the

commenters might occur if the burden-of-proof is too high. Therefore, the language in the recordkeeping section will allow for the period of homelessness to be documented by a self-certification by the head of household seeking assistance on a limited basis. In rare instances where persons have been unsheltered and out of contact for long periods of time, the recordkeeping requirements provide that up to the full period of homelessness could be documented by a self-certification by the individual or head of household seeking assistance, however, this accommodation is limited to no more than 25 percent of all chronically homeless individuals and families assisted. HUD determined that 25 percent was a reasonable limit for this accommodation as it is consistent with a previous policy used by HUD that limited the percentage of program participants in transitional housing funded through the Supportive Housing Program who could be assisted for longer than 2 years. Further, the recordkeeping section clarifies that homeless service providers are not required to verify every *day* of homelessness in a given month but instead, that a single encounter with a homeless service provider in a given month would be sufficient third-party evidence that the individual or family has been homeless for the entire month, unless there is evidence that the individual or family had a break of at least 7 consecutive nights in their homeless occasion during that month (*e.g.*, was housed with a friend or family member). HUD does not expect Continuums of Care to document a person's chronically homeless status when conducting the annual Point-in-Time count. HUD will provide clarification and guidance regarding how to enumerate persons experiencing chronic homelessness through notices and other guidance in advance of the Point-in-Time count.

*Rule clarification.* To clarify the records HUD expects Continuum of Care Program recipients and subrecipients to maintain when they are required to serve chronically homeless individuals and families, HUD has revised § 578.103(a)(4) to incorporate recordkeeping requirements for the definition of "chronically homeless." In addition, as a result of incorporating a new paragraph (4) in § 578.103(a), the remainder of § 578.103(a) has been reordered and HUD has amended § 578.87(b)(4) to update the reference from § 578.103(a)(13) to § 578.103(a)(14).

*Comment:* If there is no penalty for lying there will be fraud. A commenter

expressed concern that if there is no penalty for lying by the program participants about the length of time homeless, there is likely to be fraud.

HUD Response: In general, HUD expects that all homeless service providers will exercise due diligence when documenting periods of homelessness. The final rule includes recordkeeping requirements that will require third-party documentation where it is available, but allows for self-certification by the head of household seeking assistance in certain instances.

*Rule clarification:* To clarify that HUD expects Continuum of Care Program recipients and subrecipients documenting chronic homeless status to obtain third-party documentation whenever possible, HUD has established § 578.103(a)(4) to incorporate recordkeeping requirements for the definition of "chronically homeless" and to provide that the order of priority for documenting chronically homeless status is third-party documentation first, intake worker observations second, and certification from the person seeking assistance third. In addition, HUD has clarified that, except for in limited circumstances, at least 9 months of the homeless occasion(s) must be documented with third-party documentation.

## VI. Findings and Certifications

### *Regulatory Planning and Review*

This final rule establishes a regulatory definition for the term "chronically homeless." This rule focuses on persons with the longest histories of homelessness to ensure that funds are targeted to providing permanent supportive housing solutions for these individuals and families who are chronically homeless, consistent with the statutory definition of the term established in the McKinney-Vento Act. This definition will also ensure that communities are using the same criteria in determining whether a person is chronically homeless, and that HUD receives consistent and accurate information nationwide.

This new definition will use existing recordkeeping requirements for the Continuum of Care Program to document the homeless status of program participants, but adds that such documentation covers a program participant's homelessness status over a specific time period—at least 1 year or on at least 4 separate occasions in the last 3 years—to document the chronically homeless status of program participants. While in some instances additional program participant records will need to be obtained to identify an

individual's "chronically homeless" status, the additional burden of obtaining these records will ensure that communities are appropriately targeting HUD funds to those with the greatest need.

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, 451 7th Street SW., Room 10276, 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 Relay Service at 800-877-8339 (this is a toll-free number).

### *Information Collection Requirements*

The information collection requirements contained in this final rule have been submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2506-0112. 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.

### *Environmental Impact*

This 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 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 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 definition of "chronically homeless." The purpose of this rule is to determine the universe of individuals and families who qualify as "chronically homeless" under the McKinney-Vento Act. 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.

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

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 578

Community development, Community facilities, Grant programs—housing and community development, Grant program—social programs, Homeless, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, parts 91 and 578 of title 24 of the Code of Federal Regulations are amended as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 1. The authority citation for 24 CFR part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

■ 2. In § 91.5, the definition of "Chronically homeless" is revised to read as follows:

§ 91.5 Definitions.

\* \* \* \* \*

Chronically homeless means:

(1) A "homeless individual with a disability," as defined in section 401(9) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(9)), who:

(i) Lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and

(ii) Has been homeless and living as described in paragraph (1)(i) of this definition continuously for at least 12 months or on at least 4 separate occasions in the last 3 years, as long as the combined occasions equal at least 12 months and each break in homelessness separating the occasions included at least 7 consecutive nights of not living as described in paragraph (1)(i). Stays in institutional care facilities for fewer than 90 days will not constitute as a break in homelessness, but rather such stays are included in the 12-month total, as long as the individual was living or residing in a place not meant for human habitation, a safe haven, or an emergency shelter immediately before entering the institutional care facility;

(2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or

(3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) or (2) of this definition, including a family whose composition has fluctuated while the head of household has been homeless.

\* \* \* \* \*

PART 578—CONTINUUM OF CARE PROGRAM

■ 3. The authority citation for 24 CFR part 578 continues to read as follows:

Authority: 42 U.S.C. 11371 et seq., 42 U.S.C. 3535(d).

■ 4. In § 578.3, the definition of "Chronically homeless" is revised to read as follows:

§ 578.3 Definitions.

\* \* \* \* \*

Chronically homeless means:

(1) A "homeless individual with a disability," as defined in section 401(9) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(9)), who:

(i) Lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and

(ii) Has been homeless and living as described in paragraph (1)(i) of this definition continuously for at least 12 months or on at least 4 separate occasions in the last 3 years, as long as the combined occasions equal at least 12 months and each break in homelessness separating the occasions included at least 7 consecutive nights of not living as described in paragraph (1)(i). Stays in institutional care facilities for fewer than 90 days will not constitute as a break in homelessness, but rather such stays are included in the 12-month total, as long as the individual was living or residing in a place not meant for human habitation, a safe haven, or an emergency shelter immediately before entering the institutional care facility;

(2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or

(3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) or (2) of this definition, including a family whose composition has fluctuated while the head of household has been homeless.

\* \* \* \* \*

§ 578.87 [Amended]

■ 5. In § 578.87, paragraph (b)(4) is amended by removing the reference "§ 578.103(a)(13)" and adding in its place "§ 578.103(a)(14)".

■ 6. In § 578.103, redesignate paragraphs (a)(4) through (17) as paragraphs (a)(5) through (18) and add paragraph (a)(4) to read as follows:

§ 578.103 Recordkeeping requirements.

(a) \* \* \*

(4) Chronically homeless status. The recipient must maintain and follow

written intake procedures to ensure compliance with the chronically homeless definition in § 578.3. The procedures must require documentation at intake of the evidence relied upon to establish and verify chronically homeless status. The procedures must establish the order of priority for obtaining evidence as third-party documentation first, intake worker observations second, and certification from the person seeking assistance third. Records contained in an HMIS, or comparable database used by victim service or legal service providers, are acceptable evidence of third-party documentation and intake worker observations if the HMIS, or comparable database, retains an auditable history of all entries, including the person who entered the data, the date of entry, and the change made, and if the HMIS prevents overrides or changes of the dates on which entries are made.

(i) For paragraph (1) of the “Chronically homeless” definition in § 578.3, evidence that the individual is a “homeless individual with a disability” as defined in section 401(9) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(9)) must include:

(A) Evidence of homeless status as set forth in paragraph (a)(3) of this section; and

(B) Evidence of a disability. In addition to the documentation required under paragraph (a)(4)(i)(A) of this section, the procedures must require documentation at intake of the evidence relied upon to establish and verify the disability of the person applying for homeless assistance. The recipient must keep these records for 5 years after the end of the grant term. Acceptable evidence of the disability includes:

(1) Written verification of the disability from a professional licensed by the state to diagnose and treat the disability and his or her certification that the disability is expected to be long-continuing or of indefinite duration and substantially impedes the individual’s ability to live independently;

(2) Written verification from the Social Security Administration;

(3) The receipt of a disability check (e.g., Social Security Disability Insurance check or Veteran Disability Compensation);

(4) Intake staff-recorded observation of disability that, no later than 45 days from the application for assistance, is confirmed and accompanied by evidence in paragraph (a)(4)(i)(B)(1), (2), (3), or (5) of this section; or

(5) Other documentation approved by HUD.

(ii) For paragraph (1)(i) of the “Chronically homeless” definition in § 578.3, evidence that the individual lives in a place not meant for human habitation, a safe haven, or an emergency shelter, which includes:

(A) An HMIS record or record from a comparable database;

(B) A written observation by an outreach worker of the conditions where the individual was living;

(C) A written referral by another housing or service provider; or

(D) Where evidence in paragraphs (a)(4)(ii)(A) through (C) of this section cannot be obtained, a certification by the individual seeking assistance, which must be accompanied by the intake worker’s documentation of the living situation of the individual or family seeking assistance and the steps taken to obtain evidence in paragraphs (a)(4)(ii)(A) through (C).

(iii) For paragraph (1)(ii) of the “Chronically homeless” definition in § 578.3, evidence must include a combination of the evidence described in paragraphs (a)(4)(ii)(A) through (D) of this section, subject to the following conditions:

(A) Third-party documentation of a single encounter with a homeless service provider on a single day within 1 month is sufficient to consider an individual as homeless and living or residing in a place not meant for human habitation, a safe haven, or an emergency shelter for the entire calendar month (e.g., an encounter on May 5, 2015, counts for May 1—May 31, 2015), unless there is evidence that there have been at least 7 consecutive nights not living or residing in a place not meant for human habitation, a safe haven, or an emergency shelter during that month (e.g., evidence in HMIS of a stay in transitional housing);

(B) Each break in homelessness of at least 7 consecutive nights not living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter between separate occasions must be documented with the evidence described in paragraphs (a)(4)(ii)(A) through (D) of this section;

(C) Evidence of stays in institutional care facilities fewer than 90 days included in the total of at least 12 months of living or residing in a place not meant for human habitation, a safe haven, or an emergency shelter must include the evidence in paragraphs (a)(4)(iv)(A) through (B) of this section and evidence described in paragraphs (a)(4)(ii)(A) through (D) of this section that the individual was living or residing in a place not meant for human habitation, a safe haven, or an emergency shelter immediately prior to

entering the institutional care facility; and

(D) For at least 75 percent of the chronically homeless individuals and families assisted by a recipient in a project during an operating year, no more than 3 months of living or residing in a place not meant for human habitation, a safe haven, or an emergency shelter may be documented using the evidence in paragraph (a)(4)(ii)(D) of this section for each assisted chronically homeless individual or family. This limitation does not apply to documentation of breaks in homelessness between separate occasions, which may be documented entirely based on a self-report by the individual seeking assistance.

(iv) If an individual qualifies as chronically homeless under paragraph (2) of the “Chronically homeless” definition in § 578.3 because he or she has been residing in an institutional care facility for fewer than 90 days and met all of the criteria in paragraph (1) of the definition, before entering that facility, evidence must include the following:

(A) Discharge paperwork or a written or oral referral from a social worker, case manager, or other appropriate official of the institutional care facility stating the beginning and end dates of the time residing in the institutional care facility. All oral statements must be recorded by the intake worker; or

(B) Where the evidence in paragraph (a)(4)(iv)(A) of this section is not obtainable, a written record of the intake worker’s due diligence in attempting to obtain the evidence described in paragraph (a)(4)(iv)(A) and a certification by the individual seeking assistance that states that he or she is exiting or has just exited an institutional care facility where he or she resided for fewer than 90 days; and

(C) Evidence as set forth in paragraphs (a)(4)(i) through (iii) of this section that the individual met the criteria in paragraph (1) of the definition for “Chronically homeless” in § 578.3, immediately prior to entry into the institutional care facility.

(v) If a family qualifies as chronically homeless under paragraph (3) of the “Chronically homeless” definition in § 578.3, evidence must include the evidence as set forth in paragraphs (a)(4)(i) through (iv) of this section that the adult head of household (or if there is no adult in the family, a minor head of household) met all of the criteria in paragraph (1) or (2) of the definition.

\* \* \* \* \*

Dated: November 13, 2015.

**Harriet Tregoning,**

*Principal Deputy Assistant Secretary for  
Community Planning and Development.*

Dated: Approved on November 24, 2015.

**Nani A. Coloretti,**

*Deputy Secretary.*

[FR Doc. 2015-30473 Filed 12-3-15; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Safety and Environmental  
Enforcement**

**30 CFR Part 250**

[Docket ID: BSEE-2015-0012; 15XE1700DX  
EEEE500000 EX1SF0000.DAQ000]

**RIN 1014-AA24**

**Oil and Gas and Sulphur Operations in  
the Outer Continental Shelf—  
Decommissioning Costs**

**AGENCY:** Bureau of Safety and  
Environmental Enforcement, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the regulations to require lessees and owners of operating rights to submit summaries of actual decommissioning expenditures incurred after completion of certain decommissioning activities for oil and gas and sulphur operations on the Outer Continental Shelf. This information will help BSEE to better estimate future decommissioning costs related to OCS leases, rights-of-way, and rights of use and easement.

**DATES:** This final rule becomes effective on January 4, 2016.

**FOR FURTHER INFORMATION CONTACT:**  
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and Standards Branch,  
*Lakeisha.Harrison@bsee.gov*, (703) 787-  
1552.

**SUPPLEMENTARY INFORMATION:**

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**Executive Summary**

This final rule requires lessees and owners of operating rights (collectively, “lessees”) to submit to the Bureau of Safety and Environmental Enforcement (BSEE) summaries of actual expenditures for decommissioning of wells, platforms and other facilities on the Outer Continental Shelf (OCS) that

are required under BSEE’s existing regulations. This information will help BSEE to better estimate future decommissioning costs related to OCS leases, rights-of-way, and rights of use and easement. The Bureau of Ocean Energy Management (BOEM) may then use BSEE’s future decommissioning cost estimates to set necessary financial assurance levels to minimize or eliminate the possibility that the government will incur decommissioning liability.

In a proposed rule published on May 27, 2009, the Minerals Management Service (BSEE’s predecessor agency) proposed to require lessees to submit information (including supporting documentation) regarding expenditures actually incurred for certain mandatory decommissioning activities within 30 days of completion of each activity. Based on BSEE’s review of public comments on the proposed rule, the final rule generally requires only certified summaries of the actual expenditures (without other supporting documentation) for those decommissioning activities and extends the time period for submission of such reports to 120 days after completion of each such activity. BSEE may, however, require additional supporting information for specific decommissioning costs on a case-by-case basis.

**I. Background**

On May 27, 2009, the former Minerals Management Service (MMS) published a Notice of Proposed Rulemaking in the **Federal Register** (*Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf*) in order to update and streamline the existing OCS leasing regulations under the Outer Continental Shelf Lands Act (OCSLA) and to clarify implementation of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (see 74 FR 25177). In 2010 and 2011, the Secretary of the Interior (Secretary) reorganized MMS into three bureaus: BSEE, BOEM, and the Office of Natural Resources Revenue. The Secretary then delegated to BSEE certain responsibilities under OCSLA that were formerly held by MMS, including responsibilities for overseeing decommissioning.<sup>1</sup> BSEE’s primary purpose as an agency is to promote safety, protect the environment, and ensure responsible development and conservation of offshore oil and natural

gas resources through vigorous regulatory oversight and enforcement.

This final rule completes the rulemaking for one of the issues covered by the proposed rule that is now under BSEE’s authority. Specifically, this final rule addresses the proposed requirement that lessees submit information regarding actual expenditures incurred for certain decommissioning activities required under the existing regulations.

The other issues covered by the proposed rule now under BSEE’s authority include proposed consolidation of mechanisms for maintaining and extending leases past their primary terms and a proposed requirement for submittal of pipeline-related reports after approval of an assignment or change of designated operator (see 74 FR 25177–25178). BSEE may issue a final rule in the future regarding the proposed consolidation of mechanisms for extending and maintaining leases beyond their primary terms. Similarly, BSEE will decide at a later date whether to finalize the proposed pipeline report requirement or to address that issue again, potentially in a broader rulemaking under 30 CFR part 250, Subpart J—*Pipelines and Pipeline Rights-of-Way*. Therefore, these two issues are not included in this final rule. In addition, this final rule does not include sections of the proposed rule that now fall under BOEM’s authority.

**II. What This Final Rule Covers**

This final rule revises portions of BSEE’s regulations at 30 CFR part 250, Subpart Q—*Decommissioning Activities*. Specifically, the final rule requires lessees to submit certified summaries of actual decommissioning expenditures incurred for certain decommissioning activities that are required under Subpart Q (i.e., plugging and abandonment of wells, removal of platforms and other facilities, and site clearance)<sup>2</sup> within 120 days of completion of each such activity. This information will help BSEE better estimate future decommissioning costs related to OCS leases, rights-of-way, and rights of use and easement. BSEE’s decommissioning cost estimates may then be used by BOEM to set financial assurance levels necessary to minimize

<sup>2</sup> For example, §§ 250.1710 and 250.1711 require wells to be plugged within a year after termination of a lease or when ordered by BSEE, respectively. Section 250.1725 requires platforms and other facilities to be removed within a year of termination of a lease unless the lessee has received approval to maintain the facility to conduct other activities. Section 250.1740 requires verification that a site has been cleared of obstructions within 60 days after a well has been plugged or a platform or other facility has been removed.

<sup>1</sup> For convenience, hereafter we use the term “BSEE” rather than “MMS” in this document, where appropriate, when referring to past actions of MMS.