reference at the National Archives and Records 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/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on April 20, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–10137 Filed 4–29–11; 8:45 am]

BILLING CODE 4910–13–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

Adjudication and Enforcement

AGENCY: U.S. International Trade Commission.

ACTION: Final rule.

SUMMARY: The U.S. International Trade Commission is adopting a rule amendment revising a certain provision of the agency's rule for investigations and related proceedings under section 337 of the Tariff Act of 1930. The Supplement to the Strategic Human Capital Plan 2009–2013 issued by the Commission on January 18, 2011, provides that the Office of Unfair Import Investigations ("OUII") will not participate in a subset of Section 337 cases and will participate selectively in another subset of cases. In order to better allocate its resources, OUII may have to assign attorneys to investigations on an issue by issue basis. The rule amendment will allow OUII the flexibility to reassign attorneys to cases as necessary without having to publish notices announcing the change in the **Federal Register**. The new rule will have no substantive effect on Commission practice in conducting Section 337 investigations.

DATES: *Effective date:* May 2, 2011.

Applicability Date: The Commission will adopt procedures to implement the rule change on May 2, 2011.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Esq., telephone 202–708–2301, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). Hearing-impaired persons is advised that information on the final rulemaking can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission is adopting the following rule amendment as a final rule.

Regulatory Analysis

The Commission has determined that the final rule does not meet the criteria described in Section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus does not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice of final rulemaking, the regulation is an "agency rule of procedure and practice," and thus is exempt from the notice requirement imposed by 5 U.S.C. 553(b).

This final rule does not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, it is exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because it concerns a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

The amendment is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), since it does not contain any new information collection requirements.

List of Subjects in 19 CFR Part 210

Administration practice and procedure, Business and industry, Customs duties and inspection, Imports, Investigations.

The United States International Trade Commission amends 19 CFR part 210 as follows:

PART 210—ADJUDICATION AND ENFORCEMENT

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

■ 2. In § 210.3 revise the definition of "Party" to read as follows:

210.3 Definitions.

* * * * *

Party means each complainant, respondent, intervenor, or the Office of Unfair Import Investigations.

* * * * *

By Order of the Commission.

Issued: April 27, 2011.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2011–10552 Filed 4–29–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200 and 207

[Docket No. FR–5393–F–02]

RIN 2502–A195

HUD Multifamily Rental Projects: Regulatory Revisions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends certain Federal Housing Administration (FHA) regulations to update these regulations to reflect current HUD policy in the area of multifamily rental projects. On November 12, 2010, HUD published proposed regulations to remove outdated regulatory language and policies and to reflect proposed changes in FHA's multifamily rental project closing documents, issued for comment in January 2010, and again in December 2010. The issuance of revised multifamily rental project closing documents for public comment and corresponding regulatory changes first commenced in 2004, but was not completed.

This final rule follows the November 12, 2010 proposed rule, and takes into consideration public comments received on the November 2010 proposed rule, as well as certain comments received on HUD's issuance of further revised multifamily rental project closing documents made available for public comment by notice published on December 22, 2010. Neither the closing documents issued for comment in

January 2010 and December 2010, nor this final rule include changes affecting closing documents or regulations for healthcare facilities, nursing homes, intermediate care facilities, board and care homes, and assisted living facilities.

DATES: *Effective Date:* September 1, 2011.

FOR FURTHER INFORMATION CONTACT: John Daly, Associate General Counsel for Insured Housing, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500; telephone 202–708–1274 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

By notice published in the **Federal Register** on January 21, 2010 (75 FR 3544), HUD started anew the process for updating the multifamily rental project closing documents (closing documents), a process that first commenced with issuance of a notice published on August 2, 2004 (69 FR 46214).[1] The majority of these documents, as explained in both the 2004 and 2010 notices, had not been revised in years and needed updating to ensure that the documents are consistent with modern real estate and lending laws.

HUD recognized that in updating its closing documents corresponding changes would need to be made to certain HUD regulations. Therefore, the update effort that commenced in 2004 included an August 2, 2004 proposed rule (69 FR 46210) to update certain FHA regulations. The August 2004 proposed rule served as the basis for HUD's 2010 proposed update of regulations published on November 12, 2010 (75 FR 69363), and took into consideration public comments received in response to the 2004 proposed rule. The November 2010 proposed rule also took into consideration public comments that affected HUD's regulations. Those comments were received in response to the January 21, 2010 solicitation of public comment on HUD's proposed closing documents.[2]

In addition to the amendments proposed in 2004, the amendments offered in the November 12, 2010 proposed rule contained a change to the definition of "eligible mortgagor". The November 2010 rule proposed that an eligible mortgagor must be a single asset owner. The amendments to this definition also included removing provisions allowing natural persons and tenants in common to serve as eligible mortgagors.

In response to comments on the 2004 proposed rule, HUD also proposed a shift in the imposition of the charge imposed on late payments from 15 to 10 days. Commenters on the 2004 proposed rule had suggested that standardizing the time when the late fee applies would facilitate compliance by Government National Mortgage Association (Ginnie Mae) issuers with their obligation to make payments to investors.

Further, HUD proposed a revision to the security instrument (HUD 94000M) in the update of the closing documents. As in the 2004 proposed regulatory revisions, the changes proposed in the November 2010 proposed rule included a two-tiered default structure, a "Monetary Event of Default," for financial defaults, which would give the Lender an immediate right to an insurance fund claim, and a second class of defaults, a "Covenant Event of Default" for all other bases for default. In the "Covenant Event of Default," HUD's prior written approval would be required for the lender to make a claim on the insurance fund. Once a monetary default exists under the security instrument and continues for a minimum period of 30 days, the Lender would become eligible to receive mortgage insurance benefits.

HUD further proposed amending insurance claim requirements to provide, consistent with existing HUD practice and policy, that the mortgagee request a three-month extension of the 45-day deadline prescribed by the regulations in § 207.258 for a mortgage funded with the proceeds of state or local bonds, Ginnie Mae securities, or other bond obligations specified by HUD, any of which contains a lock-out or penalty provision.

HUD also proposed adding a new provision that would effectively allow the Commissioner to incentivize the mortgagee to accelerate payment of the outstanding principal balance due under an insured mortgage when the mortgagee does not comply promptly with the Commissioner's request to accelerate. In such cases, mortgage insurance benefits, if requested, would be reduced by an amount equal to the difference between the project's market value as of the date of the Commissioner's request and the project's market value on the date the mortgagee makes an election to assign the mortgage, or convey title to the project, as determined by appraisal procedures established by the Commissioner.

II. This Final Rule—Overview of Significant Changes

This section presents a brief overview of key changes made at this final rule stage based on consideration of issues raised by the commenters in response to the November 2010 proposed rule, and HUD's own further consideration of issues related to regulations corresponding to changes made in the closing documents. In this final rule:

- HUD modified the definition of "eligible mortgagor" to allow a non-single asset entity to be an eligible mortgagor under certain terms and conditions determined acceptable to the Commissioner. However, no regulatory exception is provided for natural persons and tenants in common.
- HUD modified its proposal to allow cash flow generated during a workout to be used once a default has been cured.
- HUD modified its insurance claim requirements to allow the mortgagee to file its application for insurance benefits based on HUD's acknowledgement of the mortgagee's election to assign.
- HUD provides that application of the regulations promulgated by this final rule and use of the corresponding updated closing documents will not be mandatory until September 1, 2011; that is, the new regulations and updated closing documents will apply to a firm commitment for mortgage insurance issued by HUD on or after September 1, 2011. The updated closing documents have completed review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, and the announcement of OMB approval and the assignment of an OMB control number is published elsewhere in today's **Federal Register**. With a September 1, 2011, effective date, HUD is providing a four-month transition period before the new regulations and updated closing documents become applicable. The regulations allow for application of the regulations and use of corresponding updated closing

[1] The update of the closing documents that commenced in 2004 and which was restarted in 2010 does not include an update of HUD's healthcare closing documents.

[2] In soliciting public comment on closing documents, HUD not only sought input from industry and interested members of the public on HUD's proposed changes to closing documents, but commenced the process for approval of documents required by the Paperwork Reduction Act of 1995. In accordance with this act, HUD issued two notices for public comment: One published on January 21, 2010 (75 FR 3544), and the second on December 22, 2010 (75 FR 80517). With each notice, HUD made the closing documents available for review, in clean form, and redline/strikeout form on HUD's Web site.

documents in effect prior to September 1, 2011, to be used after September 1, 2011, in the case of a borrower that demonstrates to the satisfaction of the Commissioner that financial hardship would result to the borrower from application of the regulations and use of the closing documents that become effective September 1, 2011.

In addition to the foregoing changes, commenters and other interested members of the public will see that many of the commenters' requests for changes are addressed in the final versions of the closing documents posted on HUD's Web site.

For example, in commenting on HUD's proposed changes to the closing documents and the regulations, parties expressed concern about the applicability of new requirements that HUD would impose after the multifamily rental project transaction had closed. Commenters expressed concern that such requirements would be applied to existing borrowers, and, without appropriate notice or time to transition to new requirements, such new requirements might have an adverse economic effect on the operation of a project. In response to this concern, HUD, in appropriate places in several of the closing documents, included the term "program obligations" to clarify the process by which HUD issues new requirements that program participants will be required to meet. The definition clarifies that notice and comment rulemaking is followed for any requirements that would be subject to such procedures. In essence, HUD makes explicit that it will follow the applicable procedures, as directed by statute or regulation, which govern issuance of a document that would announce new binding requirements, policies, processes, forms, or standards to which parties to the closing documents must comply. The definition further clarifies that changes to HUD handbooks, guides, notices and mortgagee letters shall be applicable to a project only to the extent that these changes interpret, clarify and implement terms in the relevant loan document.

Because this rule is not making changes related to HUD's healthcare programs, for the following regulations, the wording of the regulatory change is presented in a manner that clarifies that the regulatory change is not applicable to FHA's healthcare programs: §§ 200.5,[3] 200.255, 207.256b, and 207.259.

[3] The revision to § 200.88 made by this final rule does not address late charges for hospital insurance payments as those fees are separately addressed in § 242.38, which is not being revised by this rule.

III. Discussion of Public Comments

The public comment period on the November 12, 2010, proposed rule closed on December 13, 2010. HUD received 13 comments. This section presents the significant issues, questions, and suggestions submitted by public commenters, and HUD's response to these issues, questions and suggestions.

Eligible Mortgagor (24 CFR 200.5)

Comment: Two commenters stated that incorporating requirements into regulations, which can be handled administratively, was not necessary. For example, they stated that incorporation of the term single asset entity, which is in the closing documents, into regulatory language was unnecessary. They further suggested that HUD allow waiver from the single asset requirement for natural persons, tenants in common, and trusts. The commenters also suggested that, like the single asset requirement itself, a waiver process should be established at the administrative level, rather than the regulatory level, as it would be a more efficient use of agency resources.

HUD Response: The definition of "eligible mortgagor" has long been in regulations. The entity requirement is part of that definition and therefore needs to be part of the regulation. HUD further notes that the single asset entity form of ownership has become the standard form of ownership for commercial real estate transactions, and it is therefore an important change for HUD to convey in regulations.

However, HUD agrees with commenters that there should be some flexibility. HUD recognizes that in certain instances, perhaps in the situation of trusts, the Commissioner may choose to allow other entities to qualify as mortgagors. Thus, the regulations provide that except under circumstances, terms and conditions, approved by the Commissioner, mortgagors shall be a single asset mortgagor entity acceptable to the Commissioner, as limited by the applicable section of the Act,[4] and shall possess the powers necessary and incidental to operating the project. Single asset entities shall not be natural persons and tenancies in common. The regulation does not contemplate any circumstances in which an exception to the prohibition on natural persons and tenancies in common would be made and consequently does not include exception language.

As noted in the proposed rule, ownership by an individual has been largely abandoned by the commercial lending industry, and is used in extremely limited circumstances in the Fannie Mae and Freddie Mac multifamily insurance programs. In their discussion of natural persons as eligible borrowers, commenters expressed concern that natural persons would be dissuaded from seeking refinancing of projects because certain states would impose transfer taxes if project ownership was converted from a natural person into a single asset structure. HUD finds that state tax avoidance is not an acceptable rationale to adopt this change at the final rule stage, and that natural persons can create a single asset ownership structure to participate in the program.

HUD is further concerned that ownership by natural persons would allow creditors to reach the assets of the insured project. That could occur for example, if the natural person were to declare bankruptcy. HUD therefore declines to adopt the recommendation.

In addition, several commenters suggested that HUD allow properties to be held by tenants-in-common (TIC), a fractional form of ownership. One commenter noted that it was customary for properties financed with commercial mortgage backed securities in the late 1990s and early 2000s to be established as special purpose entities in the operating agreements for tenants in common borrowers. The commenter stated that if the ownership entity was structured as a single member limited liability company, where the operating agreement for each tenant in common can provide that its sole purpose is to own an undivided tenant in common interest in the specific project, both the concerns of the Internal Revenue Service (IRS) and HUD could be satisfied.

HUD notes, as mentioned previously, that commenters stated that Fannie Mae and Freddie Mac had established criteria for TIC properties. Their comment suggests that alternative financing is available from those sources, and Fannie Mae and Freddie Mac will be able to meet those market needs. Consequently, HUD believes financing is available for those borrowers who choose the TIC structure. While Fannie Mae and Freddie Mac may accommodate these types of borrowers to facilitate, for example, like kind exchanges, HUD notes that FHA's financing requirements (non-recourse, single-asset mortgagor entity) and asset management capabilities are different

[4] A mortgagor is defined in section 201(b) of the National Housing Act (12 U.S.C. 1707(b)).

from Fannie Mae and Freddie Mac. Although FHA does adopt some requirements comparable to those of Fannie Mae and Freddie Mac, FHA also includes additional measures essential to support FHA's different program requirements. Tailoring FHA's standardized documents for individual transactions, for example, which would be required for TIC borrowers, is inconsistent with HUD's goal of developing uniform documents and streamlining the underwriting process.

Commenters further stated that foreclosing availability of FHA insurance as an option under this regulation for tenants in common borrowers will have an adverse economic impact on the borrower and result in restructuring that will have unfavorable tax implications for the borrowers. As previously noted for borrowers who are natural persons, HUD does not consider tax avoidance a strong reason for HUD to accommodate a regulatory change.

HUD further notes that the structure contemplated by the IRS is insufficient in any case to meet HUD's enforcement needs. From HUD's perspective, it is difficult to identify the particular responsible party among the many fractional owners in a tenants in common structure which could serve as a contact for HUD. This ownership issue arises in attempts to identify the responsible party who would be furnishing financial statements. Moreover, identification of the responsible party would be exacerbated when enforcement issues arise, such as failure to comply with HUD Program Obligations regarding property maintenance, and a party must be designated to implement remedies.

Defaults for Purposes of Insurance Claim (Two-Tiered Default) (24 CFR 207.255)

Comment: Two commenters suggested removing the references to "Covenant Event of Default" and "Monetary Event of Default" in the regulation. Commenters on the November 12, 2010, proposed rule suggested that the terms "Monetary Event of Default" and "Covenant Event of Default" were not accurate descriptions of the processes that were set forth in the closing documents

HUD Response: HUD declines to adopt the commenters' recommendations. HUD's regulation, prior to amendment by this rule, addressed only monetary defaults. In the August 2, 2004, proposed rule and accompanying documents, HUD first proposed the two tiered default system. That 2004 two tiered system proposed a category of defaults for financial, or monetary, defaults, and a category of defaults for all other bases for default.

Commenters on the regulatory and document changes which were proposed in 2004, specifically suggested labeling these categories of defaults "Monetary Events of Default" and "Covenant Events of Default." HUD agreed with this suggestion and adopted this terminology in its January 21, 2010, notice describing these categories of default, but did not use the terminology in the closing documents proposed on January 21, 2010.

HUD's position is that it is important to distinguish between these two categories of defaults, and that the regulatory changes proposed on November 12, 2010, and the document changes proposed on December 22, 2010, make such distinction. The terms are accurate descriptions of the categories of default under the revised Security Instrument posted on HUD's Web site in connection with the publication of the December 22, 2010, notice. In that revision, a "Monetary Event of Default" occurs when a borrower fails to make a payment required by the Note or Security Instrument. The "Covenant Event of Default" includes material failures by the borrower to perform any obligations under the Security Instrument. In addition, the Security Instrument provides additional detail specifying the circumstances and specific actions which will constitute a Covenant Event of Default.

Monetary Event of Default

Comment: Commenters suggested clarifying the date of default for monetary defaults and coordinating it with the Security Instrument. A commenter stated in particular that the regulatory language provides that if a default continues for a minimum period of 30 days, the mortgagee shall be entitled to receive the benefits of the insurance provided for the mortgage. The commenter suggested that the regulatory language be revised to make the period of default in the regulation consistent with the language in the Security Instrument. The language would thus provide that the 30 day time period in the regulations is coterminous with the 30 day grace period that exists under the Security Instrument and the Note, and is not sequential to that grace period.

HUD Response: HUD agrees with the commenters' suggestion and the final versions of the Security Instrument and Note have been revised accordingly. Both the regulation and the Security Instrument provide that if the default is not cured within 30 days, then the lender will be able to accelerate. HUD believes that the change clarifies the date of default for monetary default.

Covenant Event of Default

Comment: Commenters suggested that the regulation include language in the date of default for covenant events of default to refer to grace periods established in the Security Instrument.

HUD Response: The Security Instrument specifies several bases for default, e.g. fraud, material misrepresentation, or the commencement of a forfeiture action, which cannot be cured retroactively. Therefore, providing a grace period for a cure is impractical. For example, one "covenant event of default" provides that a fraudulent or material misrepresentation in the loan application constitutes a "covenant event of default" under which the lender can exercise its right to declare a default under the Security Instrument. Since such a past misrepresentation cannot be cured, providing a 30 day cure period is infeasible. Consequently, the recommended regulatory language change cannot, as a practical matter, be implemented.

Comment: Commenters proposed additional clarifying language to specifically refer to the Regulatory Agreement as a basis for default, which they submitted would effectively implement HUD's right to direct the lender to accelerate the default upon a Declaration of Default by HUD under the Regulatory Agreement.

HUD Response: The commenters should find that their concerns are addressed in the version of the Security Instrument and Regulatory Agreement posted on HUD's Web site (at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhclosingdocuments*) in connection with publication of the December 22, 2010, notice. HUD's rights have been modified in those documents. As noted in an earlier response, several specific bases for default related to the Regulatory Agreement are included in the Security Instrument. Moreover, Section 9 of the revised Security Instrument specifically states that the Regulatory Agreement is incorporated and made a part of the Security Instrument. Further, Section 9 specifically states that upon Default of the Regulatory Agreement and upon the request of HUD, the lender, at its option may declare the whole of the Indebtedness to be due and payable. Further, under the revised Regulatory Agreement, HUD notifies the holder of the Note of a default under the

Regulatory Agreement and the holder of the Note has discretion as to whether the note is to be declared due and payable and thereafter proceed with either (1) foreclosure of the Security Instrument, or (2) assignment of the Note and Security Instrument to HUD as provided in Program Obligations. Therefore, under this scenario, HUD is not declaring the default, but is notifying the lender, who will make the determination of default.

Comment: Commenters suggested revising the default process to eliminate the 30 day period for eligibility of the Lender to receive mortgage insurance benefits in the case of a default. Through this proposal, the commenters appear to seek to abbreviate the time period for an assignment in the event HUD directs the lender to accelerate due to a violation of the Regulatory Agreement, which is consistent with HUD directing the lender to accelerate the debt.

HUD Response: HUD declines to adopt this recommendation. Under the revised Regulatory Agreement, and as noted in an earlier response, the lender will not be subject to HUD's direction, but will have the authority to accelerate the debt on its own behalf.

Comment: A commenter suggested adding a materiality standard for the covenant event of default in the Regulatory Agreement, because "waste" is not defined in the regulations.

HUD Response: HUD believes that commenters were concerned that HUD would be exercising its authority to direct the lender to accelerate based on small infractions or minor, de minimis technicalities. HUD has addressed the commenter's concerns in the contractual documents that implement the program. Under the revised documents, HUD has included a definition of waste.[5] Also, HUD is not retaining the right to exercise the option of foreclosing based on such de minimis issues. The lender now has the authority to commence the acceleration process. HUD therefore believes that the flexibility provided to Lenders to determine when to commence the acceleration process is sufficient to address commenters' concerns. Because the responsibility now lies with the lender, which has flexibility and is more knowledgeable about the situation, the dynamic has changed. The lender is, in fact less likely to accelerate since they are likely to have more substantial information than HUD.

Modification of Mortgage Terms (24 CFR 207.256b)

Comment: A commenter suggested including language which would make it clear that the requirement that the cash flow generated during a work-out be held "in trust for disposition, as directed by the Commissioner" no longer apply when the default has been cured. Commenters stated that the language would delay modification, and suggested addition of a clarifying phrase specifying that the Commissioner's approval for disposition of the cash would not be required when the default has been cured.

HUD Response: HUD has included the clarifying language suggested by the commenter.

Commissioner's Right to Require Acceleration (24 CFR 207.257)

Comment: One commenter stated that there should be no mandatory acceleration.

HUD response: The regulation does not require mandatory acceleration, but reserves to HUD the right to require the mortgagee to accelerate.

Comment: A commenter recommended replacing the term "amortization charges" with the term "payments," on the grounds that the term "amortization charges" is not defined in the regulation and does not have a commonly understood meaning. For example, the term could mean principal and interest payments or principal amortization payments or something else, and, in any event, would not include payments into escrows for taxes, insurance, etc. as required under the mortgage.

HUD Response: HUD made a change in punctuation to the language that caused the commenter's confusion. The change adopted in the final rule clarifies that "amortization charges" is not an umbrella term in the regulatory provision.

Mortgagee Notice of Election To Assign for Insurance Benefits (24 CFR 207.258)

Comment: The regulations now codified, which can be found at 24 CFR 207.258(a), establish the timing for a mortgagee to either file an insurance claim or elect to assign the mortgage to the Commissioner (referred to as a Notice of Election). The regulatory language proposed in the November 2010 rule provides that the lender must, within 45 days after the date of eligibility, notify the Commissioner of its intention to (1) File a claim, (2) elect to assign, or (3) acquire and convey title. If the mortgagee elects to assign the mortgage, under 24 CFR 207.258(b), the mortgagee must, within 30 days of its election, file its application for insurance benefits and assign the mortgage. The Commissioner may extend the 30 days in which the mortgagee must file its application for insurance benefits and assign the mortgage if the Commissioner is considering a partial payment of claim. Section 207.258 also provides special treatment for certain projects, *e.g.,* those funded with proceeds of state and local bonds and Ginnie Mae securities.

Commenters contend that the language in § 207.258(a) detailing the "Notice of Election" to file an insurance claim or assign under the authority provided in § 207.258(b) could mean that HUD could actually extend the mortgagees filing of an insurance claim indefinitely,

HUD Response: In response to this concern, HUD added language to § 207.258(a) which provides that the Commissioner may extend the 45 day notice period at the request of the mortgagee. The extension gives mortgagees additional time to develop alternatives. The approval of an extension shall in no way prejudice the mortgagee's right to file a notice of its intention to file an insurance claim and of its election to either assign the mortgage to the Commissioner, or to acquire and convey title to the Commissioner.

Comment: A commenter suggested clarifying that for mortgages funded with the proceeds of state or local bonds, GNMA securities, participation certificates, or other bond obligations which specify a prepayment penalty or lock out, mortgagees should request a three month extension of the deadline for filing notice of the mortgagees' intention to file an insurance claim and the mortgagees' election to assign the mortgage or acquire and convey title in accordance with the mortgagee certificate. Commenters suggested that the proposed language does not specify

[5] Section 1 of the Security Instrument, for example, includes the following definition. Waste means a failure to keep the Mortgaged Property in decent safe and sanitary condition and in good repair. During any period in which HUD insures this Loan or holds a security interest on the Mortgaged Property, Waste is committed when, without Lender's and HUD's express written consent, Borrower: (1) Physically changes the Mortgaged Property, whether negligently or intentionally, in a manner that reduces its value; (2) fails to maintain and repair the Mortgaged Property in accordance with Program Obligations; (3) fails to pay before delinquency any Taxes secured by a lien having priority over this Security Instrument; (4) materially fails to comply with covenants in the Note, this Security Instrument or the Regulatory Agreement respecting physical care, maintenance, construction, abandonment, demolition, or insurance against casualty of the Mortgaged Property; or (5) retains possession of Rents to which Lender or its assigns have the right of possession under the terms of the Loan Documents.

the length of the required extension of the deadline to assign the mortgage or acquire and convey title. Commenters suggest that such language be included and that this period be three months, as lenders must use their own resources and lines of credit to make monthly payments on outstanding Ginnie Mae securities during the pendency of a default.

HUD Response: HUD revised § 207.258(a) at this final rule stage in part to address the commenters concerns. For "special treatment projects" HUD understands the commenter's concerns and provided the mortgagee with the ability to request a 90 day extension of the deadline for filing the notice of the mortgagee's intention to file an insurance claim or elect to assign or acquire and convey title, which HUD may further extend at the written request of the mortgagee. This revision will allow mortgagees to develop alternative funding sources and potentially refinance, thus avoiding a claim on the FHA insurance fund.

Comment: A commenter suggested HUD delete language suggesting that Lenders "assist" borrowers to arrange refinancing to cure a default and substitute "cooperate" with borrowers to obtain refinancing.

HUD Response: HUD declines to adopt this suggestion. It is HUD's position that the lender should actively engage in assisting the borrower with refinancing in order to meet HUD's expectation that lenders will be an active participant in seeking and obtaining refinancing.

Comment: A commenter suggested that HUD revise the language on prepayment penalties, to be consistent with Mortgagee Letter 87–9,[6] and that HUD also revise the language to reflect a "prepayment penalty of one percent or less." The commenter also suggested that HUD modify the Lenders Certificate to delete the term penalty.

HUD Response: HUD has decided to revise the regulatory language to reflect the terminology "prepayment premium" instead of "prepayment penalty." This language change is consistent with the Lender's Certificate posted on HUD's Web site in connection with the December 22, 2010, notice seeking comment on further revised closing documents. However, HUD declines to adopt the recommendation to limit the mortgagees' alternative election requirements to those situations where the "premium" is one percent or less. Mortgagee Letter 87–9 allows prepayment penalties that initially exceed three percent when certain conditions which relate to HUD determinations on the financial viability of the project are met. HUD intends to retain the authority set forth in Mortgagee letter 87–9 and therefore declines the recommendation as such a limitation would unduly restrict the circumstances in which the alternative election process would be used.

Comment: A commenter suggested deleting the requirement that successors and assigns certify that they be bound by the prepayment provisions.

HUD Response: HUD has determined to retain this provision. The notice provided by the certification and the regulation improves the probability that potentially affected parties are aware of this requirement.

Comment: A commenter suggested that HUD delete regulatory language that provides the mortgagee authority to assign the mortgage to HUD within 30 days of the mortgagee's election to assign. HUD has, in practice, provided the mortgagee with a deadline measured from the date of HUD's acknowledgement of the mortgagee's election.

HUD Response: HUD has addressed the commenter's recommendation by revising the proposed rule language to comply with HUD's corresponding process of linking the deadline to the date of HUD's acknowledgement of the request.

Comment: HUD received comments that the industry would not be able to make the changes necessary to adapt their practices to the new loan documents by the May 1, 2011 published transition date:

HUD Response: In acknowledgment of the industry's concerns and the recognition that there are projects already in the pipeline, as noted earlier in this preamble, HUD has established an effective date of September 1, 2011. Application of the regulations promulgated by this final rule and use of the corresponding updated closing documents will be mandatory for all project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011.

IV. Multifamily Rental Projects—Updating of Regulations and Closing Documents

The updating of HUD's multifamily rental project closing documents and corresponding regulations has been an undertaking for many years. Although formal solicitation of public comment on updated closing documents and regulatory revisions commenced with HUD's August 2, 2004, proposed rule (69 FR 46210) and accompanying August 2, 2004, notice (69 FR 46214) providing revised and updated closing documents, the effort to update the closing documents actually began in calendar year 2000. The August 2, 2004, notice providing for revised closing documents noted that updated closing documents were first presented on HUD's Web site in March 2000 (see 69 FR 46214). Through all of these requests for comment over the past 11 years, industry and other interested members of the public have responded to HUD's solicitation for feedback and input and have provided valued information. All of the comments were appreciated by HUD and carefully considered. The many times that HUD has posted updated documents on its Web site for review and comment, not only in clean form but in redline/strikeout form, reflects HUD's desire to be open and transparent with industry about all changes being made, even small editorial changes.

It has taken many years to bring these documents and corresponding regulations up-to-date with current practices in the industry. HUD intends to keep these documents and the corresponding regulations current with industry practices and applicable law. The every-3-year review and solicitation of public comment required by the Paperwork Reduction Act will help keep the closing documents current, and allow for industry and other interested members of the public to once again provide comment and input on changes they believe are important to maintaining the documents up-to-date with current practices.

The updating of the closing documents and corresponding regulations does not only benefit HUD and industry, but meets an important goal of the Administration. On January 18, 2011, President Obama signed Executive Order 13563, entitled "Improving Regulation and Regulatory Review," which was published in the **Federal Register** on January 21, 2011 (76 FR 3822). In this executive order, the President reaffirmed the principles governing regulatory review established by Executive Order 12866, entitled "Regulatory Planning and Review," issued September 30, 1993, and published in the **Federal Register** on October 4, 1993, at 58 FR 51735. The President also, in this executive order, among other things, directed Federal agencies to review existing regulations and to determine if existing regulations are outmoded, ineffective, insufficient or excessively burdensome, and to modify, streamline, expand, or repeal the regulations as may be appropriate.

[6] Mortgagee Letter 87–9 can be found at *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/files/87-9ml.txt.*

The updating of outmoded closing documents and corresponding regulations are consistent with the President's executive order.

V. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Room 10276, Office of the General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Unfunded Mandates Reform Act

Title II of 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 the private sector. This rule does not impose any Federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (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. The rule is limited to making certain conforming amendments to FHA regulations that address multifamily rental projects to ensure their consistency with the recent update and revision of the documents used for multifamily rental project closings. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects is 14.155.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons discussed in this preamble, HUD is amending 24 CFR parts 200 and 207 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

■ 2. Revise § 200.5 to read as follows:

§ 200.5 Eligible mortgagor.

(a) Except as provided in paragraph (b) of this section, the mortgagor:

(1) Shall be a single asset mortgagor entity acceptable to the Commissioner, as limited by the applicable section of the Act, and shall possess the powers necessary and incidental to operating the project, except that the Commissioner may approve a non-single asset mortgagor entity under such circumstances, terms and conditions determined and specified as acceptable to the Commissioner; and

(2) Shall not be a natural person or tenant in common.

(b)(1) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w), the mortgagor shall be a natural person or entity acceptable to the Commissioner, as limited by the applicable section of the Act, and shall possess the powers necessary and incidental to operating the project.

(2) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regulations of paragraph (a) of this section shall apply, unless the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (a) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the regulations of paragraph (b)(1) shall apply.

■ 3. Revise § 200.88 to read as follows:

§ 200.88 Late charge.

(a) The mortgage may provide for the collection by the mortgagee of a late charge in accordance with terms, conditions, and standards of the Commissioner for each dollar of each payment to interest or principal:

(1) More than 10 days in arrears to cover the expense involved in handling delinquent payments;

(2) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w), more than 15 days in arrears to cover the expense involved in handling delinquent payments.

(b) Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

■ 4. The authority citation for part 207 continues to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

■ 5. Revise § 207.255 to read as follows:

§ 207.255 Defaults for purposes of insurance claim.

(a)(1) Except as provided in paragraph (b) of this section, the following shall be considered a default under the terms of a mortgage insured under this subpart:

(i) Failure of the mortgagor to make any payment due under the mortgage (also referred to as a "Monetary Event of Default" in certain mortgage security instruments); or

(ii) A material violation of any other covenant under the provisions of the mortgage, if because of such violation, the mortgagee has accelerated the debt, subject to any necessary HUD approval (also referred to as a "Covenant Event of Default" in certain mortgage security instruments).

(2) For purposes of a mortgagee filing an insurance claim with the Commissioner, the failure of the mortgagor to make any payment due under an operating loss loan or under the original mortgage shall be considered a default under both the operating loss loan and original mortgage.

(3) If a default as defined in paragraphs (a)(1) and (a)(2) of this section continues for a minimum period of 30 days, the mortgagee shall be entitled to receive the benefits of the insurance provided for the mortgage, subject to the procedures in this subpart.

(4) For the purposes of paragraph (b) of this section, the date of default shall be:

(i) The date of the first failure to make a monthly payment that subsequent payments by the mortgagor are insufficient to cover when those subsequent payments are applied by the mortgagee to the overdue monthly payments in the order in which they became due; or

(ii) The date of the first uncorrected violation of a covenant or obligation for which the mortgagee has accelerated the debt.

(5) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regulations of paragraph (a) of this section shall apply, unless the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (a) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the regulations of paragraph (b) shall apply.

(b)(1) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w), and section 242 of the Act (12 USC 1715z–7), the following shall be considered a default under the terms of a mortgage insured under this subpart:

(i) Failure of the mortgagor to make any payment due under the mortgage; or

(ii) Failure to perform any other covenant under the provisions of the mortgage, if the mortgagee, because of such failure, has accelerated the debt.

(2) In the case of an operating loss loan, the failure of the mortgagor to make any payment due under such loan or under the original mortgage shall be considered a default under both the loan and original mortgage.

(3) If such defaults, as defined in paragraph (b) of this section, continue for a period of 30 days the mortgagee shall be entitled to receive the benefits of the insurance hereinafter provided.

(4) For the purposes of this section, the date of default shall be considered as:

(i) The date of the first uncorrected failure to perform a covenant or obligation; or

(ii) The date of the first failure to make a monthly payment which subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

■ 6. Revise § 207.256 to read as follows:

§ 207.256 Notice to the Commissioner of default.

(a) If a default as defined in § 207.255(a) or (b) is not cured within the grace period of 30 days provided under § 207.255(a)(3) or (b)(3), the mortgagee must, within 30 days after the date of the end of the grace period, notify the Commissioner of the default, in the manner prescribed in 24 CFR part 200, subpart B.

(b) The mortgagee must give notice to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of the mortgagor's violation of any covenant, whether or not the mortgagee has accelerated the debt.

■ 7. Revise § 207.256a to read as follows:

§ 207.256a Reinstatement of defaulted mortgage.

If, after default and prior to the completion of foreclosure proceedings, the mortgagor cures the default, the insurance shall continue on the mortgage as if a default had not occurred, provided the mortgagee gives notice of reinstatement to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B.

■ 8. Revise § 207.256b to read as follows:

§ 207.256b Modification of mortgage terms.

(a) The mortgagor and the mortgagee may, with the approval of the Commissioner, enter into an agreement that extends the time for curing a default under the mortgage or modifies the payment terms of the mortgage.

(b)(1) Except as provided in paragraph (b)(2), the Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given, unless the mortgagor agrees in writing that, during such period as the mortgage continues to be in default, and payments by the mortgagor to the mortgagee are less than the amounts required under the terms of the original mortgage, the mortgagor or mortgagee, as may be appropriate in the particular situation, will hold in trust for disposition, as directed by the Commissioner, all rents or other funds derived from the secured property that are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges, under the mortgage.

(2) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w), and section 242 (12 USC 1715z–7), the Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given unless the mortgagor agrees in writing that, during such period as payments to the mortgagee are less than the amounts required under the terms of the original mortgage, the mortgagor will hold in trust for disposition as directed by the Commissioner all rents or other funds derived from the property which are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges, under the mortgage.

(3) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regulations of paragraph (b)(1) of this section shall apply, unless the mortgagor demonstrates to the

satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (b)(1) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the regulations of paragraph (b)(2) shall apply.

(c) The Commissioner may exempt a mortgagor from the requirement of paragraph (b) of this section in any case where the Commissioner determines that such exemption does not jeopardize the interests of the United States.

■ 9. Revise § 207.257 to read as follows:

§ 207.257 Commissioner's right to require acceleration.

Upon receipt of notice of violation of a covenant, as provided for in § 207.256(b), or otherwise being apprised of the violation of a covenant, the Commissioner reserves the right to require the mortgagee to accelerate payment of the outstanding principal balance due in order to protect the interests of the Commissioner.

■ 10. Amend § 207.258, as follows:

■ a. Revise paragraph (a);

■ b. Redesignate paragraphs (b)(1) through (b)(5) as (b)(2) through (b)(6) respectively;

■ c. Redesignate the introductory text of paragraph (b) as paragraph (b)(1); and

■ d. Revise newly designated paragraph (b)(1), to read as follows:

§ 207.258 Insurance claim requirements.

(a) *Alternative election by mortgagee.* (1) When the mortgagee becomes eligible to receive mortgage insurance benefits pursuant to § 207.255(a)(3) or (b)(3), the mortgagee must, within 45 days after the date of eligibility, give the Commissioner notice of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner, as provided in paragraph (b) of this section, or to acquire and convey title to the Commissioner, as provided in paragraph (c) of this section. Notice of this election must be provided to the Commissioner in the manner prescribed in 24 CFR part 200, subpart B. HUD may extend the notice period at the request of the mortgagee under the following conditions:

(i) The request must be made to and approved by HUD prior to the 45th day after the date of eligibility; and

(ii) The approval of an extension shall in no way prejudice the mortgagee's right to file its notice of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner or to acquire and convey title to the Commissioner within the 45 day period or any extension prescribed by the Commissioner.

(2) For mortgages funded with the proceeds of state or local bonds, GNMA mortgage-backed securities, participation certificates, or other bond obligations specified by the Commissioner (such as an agreement under which the insured mortgagee has obtained the mortgage funds from third party investors and has agreed in writing to repay such investors at a stated interest rate and in accordance with a fixed repayment schedule), any of which contains a lock-out or prepayment premium, the mortgagee must, in the event of a default during the term of the prepayment lock-out or prepayment premium (i.e., prior to the date on which prepayments may be made with a premium):

(i) Request a 90-day extension of the deadline for filing the notice of the mortgagee's intention to file an insurance claim and the mortgagee's election to assign the mortgage or acquire and convey title in accordance with the mortgagee certificate, which HUD may further extend at the written request of the mortgagee;

(ii) Assist the mortgagor in arranging refinancing to cure the default and avert an insurance claim, if the Commissioner grants the requested (or a shorter) extension of notice filing deadline;

(iii) Report to the Commissioner at least monthly on any progress in arranging refinancing;

(iv) Cooperate with the Commissioner in taking reasonable steps in accordance with prudent business practices to avoid an insurance claim;

(v) Require successors or assigns to certify in writing that they agree to be bound by these conditions for the remainder of the term of the prepayment lock-out or prepayment premium; and

(vi) After commencement of amortization of the refinanced mortgage, notify HUD of a delinquency when a payment is not received by the 10th day after the date the payment is due.

(3) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regulations of paragraph (a)(2) of this section shall apply, unless the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (a)(2) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the regulations of paragraph (a)(2) shall not apply.

(b) *Assignment of mortgage to Commissioner.* (1) *Timeframe; request for extension.*

(i) Except for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w), and section 242 (12 U.S.C. 1715z–7), if the mortgagee elects to assign the mortgage to the Commissioner, the mortgagee shall, at any time within 30 days after the date HUD acknowledges the notice of election, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, any applicable credit instrument and the realty and chattel security instruments.

(ii) The Commissioner may extend this 30-day period by written notice that a partial payment of insurance claim under § 207.258b is being considered. A mortgagee may consider failure to receive a notice of an extension approval by the end of the 30-day time period a denial of the request for an extension.

(iii) The extension shall be for such term, not to exceed 60 days, as the Commissioner prescribes; however, the Commissioner's consideration of a partial payment of claim, or the Commissioner's request that a mortgagee accept partial payment of a claim in accordance with § 207.258b, shall in no way prejudice the mortgagee's right to file its application for full insurance benefits within either the 30-day period or any extension prescribed by the Commissioner.

(iv) The requirements of paragraphs (b)(2) through (b)(6) of this section shall also be met by the mortgagee.

* * * * *

■ 11. In § 207.259, revise paragraph (b)(2)(iii), and new paragraphs (b)(2)(vi) and (b)(2)(vii) to read as follows:

§ 207.259 Insurance benefits.

* * * * *

(b) * * *

(2) * * *

(iii) The sum of the cash items retained by the mortgagee pursuant to § 207.258(b)(6), except the balance of the mortgage loan not advanced to the mortgagor.

* * *

(vi) Except for multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w) and under section 242 of the Act (12 U.S.C. 1715z–7), when there is a covenant default as defined in

§ 207.255(a)(1)(ii) and a mortgagee refuses to comply promptly with the Commissioner's request to accelerate payment pursuant to § 207.257, an amount equal to the difference between the project's market value as of the date of the Commissioner's request and the project's market value as of the date the mortgagee makes an election to assign the mortgage, or convey title to the project, as determined by appraisal procedures established by the Commissioner.

(vii) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance on or after September 1, 2011, the regulations of paragraph (b)(2)(vi) of this section shall apply, unless the mortgagor demonstrates to the satisfaction of the Commissioner that financial hardship to the mortgagor would result from application of the regulations in paragraph (b)(2)(vi) of this section due to the reasonable expectations of the mortgagor that the transaction would close under the regulations in effect prior to September 1, 2011, in which case, the regulations of paragraph (b)(2)(vi) shall not apply.

* * * * *

Dated: April 26, 2011.

Robert C. Ryan,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 2011–10450 Filed 4–29–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0287]

Drawbridge Operation Regulation; Mispillion River, Milford, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, District Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Route 1/Rehoboth Blvd Bascule Bridge across the Mispillion River, mile 11.0, at Milford, DE. This deviation allows the bridge to remain in the closed position for two months to accommodate the necessary bridge cleaning and painting of the bridge.

DATES: This deviation is effective from 12 a.m. on May 13, 2011 through 11:59 p.m. on July 17, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0287 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0287 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lindsey Middleton, Bridge Management Specialist, Coast Guard; telephone 757–398–6629, e-mail *Linsey.R.Middleton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Marinis Bros. Inc., (Marinis) on behalf of Delaware Department of Transportation, has requested a temporary deviation from the current operating regulation of the Route 1/Rehoboth Blvd Bascule Bridge across the Mispillion River, mile 11.0, at Milford, DE. The vertical clearance of this bridge is five feet at mean high water (MHW) in the closed position and unlimited in the open position. During this deviation period, the vertical clearance will be limited to four feet at MHW due to the scaffolding that will be used for the maintenance of the bridge. Vessels that are able to pass through the bridge may do so at anytime. The bridge is able to open for emergencies if at least five business days are given. There are no alternate routes available to vessels.

The current operating schedule for the bridge is set out in 33 CFR 117.241. The regulation requires the bridge to open on signal if at least 24 hours notice is given. The requested deviation is to accommodate painting and cleaning of the bridge. To carry out the bridge maintenance safely and successfully, the draw of the bridge will be maintained in the closed-to-navigation position from 12 a.m. on May 13, 2011 through 11:59 p.m. on July 17, 2011.

Logs from the past two years have shown that there are minimal openings during the period of time this deviation will be enforced. The majority of vessel traffic is recreational boaters. Most, if not all, of the past openings have been requested by one specific resident of the area. The Coast Guard and Marinis have been in contact with this resident and have worked together to accommodate any necessary bridge openings during the temporary deviation. The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners so that mariners can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 18, 2011.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 2011–10514 Filed 4–29–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE104–1102; FRL–9298–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: EPA is updating the materials submitted by Delaware that are incorporated by reference (IBR) into the state implementation plan (SIP). The regulations affected by this update have been previously submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Regional Office.

DATES: *Effective Date:* This action is effective May 2, 2011.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room Number 3334, EPA