On July 10, 1985, the Administrator of the Drug Enforcement Administration issued a final rule in the **Federal Register** temporarily placing MPPP and PEPAP into Schedule I of the CSA pursuant to the emergency scheduling provisions of 21 U.S.C. 811(h). This action which became effective on August 12, 1985 was based on a finding by the Administrator that the emergency scheduling of MPPP and PEPAP was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) provides that the emergency scheduling of a substance expires at the end of one year from the effective date of the order. However, if a rulemaking proceeding to schedule the substance has been initiated pursuant to section 201(a)(1) of the CSA (21 U.S.C. 811(a)(1)), the temporary scheduling may be extended for up to six months. Under this provision, the temporary scheduling of MPPP and PEPAP which is due to expire on August 12, 1986 will be extended until February 12, 1987 or until the date on which a final rule, published as a result of the formal rulemaking proceeding, is effective, whichever occurs first.

Pursuant to 21 U.S.C. 811(h)(2) and since proceedings have been initiated in accordance with 21 U.S.C. 811(a)(1) to schedule MPPP and PEPAP, the Administrator hereby orders that the temporary scheduling of MPPP and PEPAP be extended to February 12, 1987 or until the conclusion of the rulemaking proceeding, whichever occurs first.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the extended scheduling of MPPP and PEPAP in Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). The substances MPPP and PEPAP have no legitimate use or manufacturer in the United States.

It has been determined that the extension of the temporary placement of MPPP and PEPAP into schedule I of the CSA under the emergency scheduling provision is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

Dated: August 5, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-17948 Filed 8-8-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-86-1219; FR-1776]

Changes to the Minimum Property Standards (MPS) for Care-Type Housing

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

ACTION: Final rule.

SUMMARY: This final rule changes the basic structure of HUD's Minimum Property Standards for Care-Type Housing. HUD Handbook 4920.1, which contained the MPS for such structures, has been withdrawn. Instead, the Department will rely on local or State codes that a HUD Field Office has verified as being comparable to one of the national model codes, or on the provisions of nationally recognized model building codes. The requirements in HUD Handbook 4910.1, "Minimum Property Standards for Multifamily Housing" which has now been retitled "Minimum Property Standards for Housing", will now apply to care-type housing also, and provide requirements that are unlikely to be contained in local, State or model codes. These changes will preserve the quality of care-type housing and protect the Department's insurance fund while simplifying construction requirements.

This rule also deletes certain referenced standards from the MPS, and references the Uniform Federal Accessibility Standards as the design and construction criteria for handicapped persons.

EFFECTIVE DATE: October 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mark W. Holman, Manufactured Housing and Construction Standards Division, Room 9152, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410-8000, telephone (202) 755-6590. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: Section 232 of the National Housing Act, 12 U.S.C. 1715w, as amended by section 437 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, 97 Stat. 1153, 1222, authorizes the Secretary of Housing and Urban Development "to insure any mortgage which covers a new or rehabilitated nursing home or intermediate care facility or combined nursing home and intermediate care facility or a board and care home. . . ." (*See* 12 U.S.C. 1715w[d]). The Secretary may insure such mortgages "upon such terms and conditions as he may prescribe. . . ." (*See* 12 U.S.C. 1715w[c]). Similarly, section 242 and Title XI of the National Housing Act authorize the Secretary to insure mortgages covering hospitals and group practice facilities. Such mortgages may be insured under such terms and conditions as the Secretary may prescribe (*See* 12 U.S.C. 1715z-7, 12 U.S.C. 1749aaa-1749aaa-5). Accordingly, the Secretary prescribed standards for determining the acceptability of care-type housing for purposes of mortgage insurance by issuing the Minimum Property Standards (MPS) for Care-Type Housing. The MPS for Care-Type Housing were published as HUD Handbook 4920.1, and were incorporated into the Department's regulations by authority of 24 CFR 200.927.

On February 15, 1985, the Department published at 50 FR 6359 a proposed rule to change the basic structure of the MPS. That rule proposed that the Department eliminate HUD Handbook 4920.1, which contains the MPS for care-type housing, and instead rely upon acceptable local or State codes or designated nationally recognized model building codes to provide the health and safety criteria for care-type housing. The rule also proposed that the Department apply the requirements of the MPS for Multifamily Housing in HUD Handbook 4910.1 to care-type housing as well. Finally, the rule proposed to revise the MPS in Handbook 4910.1 to reflect the inclusion of care-type housing and appropriate standards that are referenced in the MPS and in Appendix A of 24 CFR Part 200.

The Department has evaluated these proposed changes in light of the recent amendment to section 526 of the National Housing Act, 12 U.S.C. 1735f-4 by section 405 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181, 97 Stat. 1153 (1983). As amended, section 526(b) permits the Secretary to require, with respect to health and safety, that properties other than manufactured homes "comply with one of the nationally recognized model building codes, or with a State or local building code based on one of the nationally recognized model building codes or their equivalent." The Secretary is "responsible for determining the comparability of the State and local codes to such model codes. . . ."

I. The Final Rule

A. General

As stated in the February 15, 1985 proposed rule, the Department is withdrawing the handbook which contains the MPS for care-type housing. In its place, the Minimum Property Standards for Multifamily Housing, 24 CFR 200.925a–c, have been changed to serve as the Minimum Property Standards for care-type housing. Essentially, this has been accomplished by amending the language of 24 CFR 200.925a–c so that it applies both to multifamily and to care-type structures.

Under §§ 200.925a–c, as now changed, HUD will rely upon local or State codes or nationally recognized model codes to provide most of the criteria for its care-type construction standards. The Department will rely upon a local or State code only after it has been determined by the Department to be comparable to one of the nationally recognized model building codes or its equivalent. In some areas, the Department may partially accept a local or State code. In such areas, the Department will rely upon the local or State code, plus those provisions of one of the nationally recognized model codes identified by the local HUD Field Office in accordance with the table set forth in Appendix J of HUD Handbook 4910.1, now retitled "Minimum Property Standards for Housing" and identified in § 200.929(b)(2). In areas where a local or State code has not been accepted or partially accepted by the Department, the Department will require compliance with one of the nationally recognized model codes identified in 24 CFR 200.925c(a).

In all instances, the Department will require compliance with the standards retained in HUD Handbook 4910.1, which has been retitled "MPS for Housing." In this handbook, the Department has set forth standards relating to durability, energy and certain other matters. The handbook has been changed so as to be consistent with this rule. Copies of the changes will be provided automatically by the Government Printing Office to previous purchasers of the Handbook and to others upon request.

For a discussion of the application of §§ 200.925a–c, the standard for determining the comparability of local and State codes and other relevant matters, see the preamble to the final changing the Minimum Property Standards for Multifamily Housing, 49 FR 18690, May 1, 1984.

In order for a code to be approved for multifamily structures, the residential portions of the code must be reviewed and accepted. Similarly, in order for a code to be accepted for care-type structures, the institutional portions of the code must be reviewed and accepted. Therefore, if a jurisdiction's code has been accepted for the construction of multifamily structures, that jurisdiction's code will still have to be reviewed to determine whether it is acceptable for the construction of care-type structures.

It should be noted that the Department of Health and Human Services (HHS) requires, as a condition for participation in the Medicare Program, that care-type structures comply with the requirements of the Life Safety Code, National Fire Protection Association (NFPA) 101 or a State code that is deemed adequate. This final rule would not affect HHS requirements.

B. Referenced Standards

As stated in the proposed rule of February 15, 1985, the final rule changes the design and construction criteria for handicapped persons that were in HUD Handbook 4910.1. Instead of requiring compliance with the "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People" that are in ANSI A117.1–80 as published by the American National Standards Institute (ANSI), the Department will reference the Uniform Federal Accessibility Standards (UFAS) at 24 CFR Part 40, Appendix A, and delete the reference to ANSI A117.1–80 in 24 CFR Part 200, Appendix A. Certain aspects of design and construction applicable to housing for the elderly would also comply with the UFAS.

The final rule also deletes the reference in Appendix A of 24 CFR Part 200, and in the MPS, to ANSI A208.1–79 "Mat Formed Wood Particleboard". The Department has determined that, without additional coating or processing, this material is not appropriate for exterior wall finishes.

C. One and Two Family MPS

The Department has decided to retitle HUD Handbook 4910.1 "MPS for Housing", instead of "MPS for Multifamily and Care-Type Housing", and to incorporate the rules for one and two family dwellings, at 24 CFR 200.926, as Appendix K in Handbook 4910.1. Including the rules for one and two family dwellings in the Handbook will make referencing them easier for builders and other users of both documents.

II. Public Comments

The Department received 28 comments. Two supported the proposed rule without change while the remainder requested changes to the following energy efficiency, fire safety, accessibility or carpet provisions.

A. Energy Efficiency

Both the proposed and final rules, in adopting the MPS for Multifamily Housing, require compliance with provisions of the CABO Model Energy Code, 1983 Edition (*See* Minimum Property Standards for Housing, Handbook 4910.1, section 607–1.1). In addition, the MPS for Multifamily Housing contains a specific provision which deals with the energy efficiency of masonry buildings. That provision permits the energy design of a property to take into consideration thermal mass of building components only to the extent that the Department is provided with empirical evidence that "quantifies the effect of thermal mass with respect to the specific geographical location in question and with respect to the specific type of construction in question." *Id.*, section 607–1.2.

Twenty-one of the twenty-eight public comments concerned the method for determining the energy efficiency of masonry buildings. The primary issue raised by these commenters was that buildings with heavy-weight masonry components should be provided with a prescriptive way to receive credit for the effects of masonry on building energy efficiency. They suggested that Appendix J of the Standard Building Code would be an acceptable method for calculating the effects of masonry thermal mass, and requested that it be incorporated in the final rule as an acceptable method for providing the "empirical evidence" required by section 607–1.2 of Handbook 4910.1, referenced in the proposed rule. The procedures contained in Appendix J of the Standard Building Code attempt to quantify a complex phenomenon. The Department has concluded, however, that these procedures lack a sufficient engineering basis to justify their acceptance.

In the final rule changing the MPS for Multifamily Housing (49 FR 18690, May 1, 1984), the Department concluded that some difference in requirements may be appropriate, based upon the greater mass of masonry structures. However, the Department was unable at that time to determine exactly what differences would be appropiate for various types of construction in different parts of the country. Since publication of that rule, the Department has not obtained the information and data necessary to permit it to make this determination now.

Information regarding thermal mass has been and still is being developed by organizations such as the Department of Energy, the National Bureau of Standards, Oak Ridge National Laboratories and Lawrence Berkeley Laboratory. In addition, the Department expects that the American Society of Heating, Refrigeration and Air-conditioning Engineers (ASHRAE) and other similar organizations will eventually develop standards for thermal mass effects. When additional data and information are available, HUD will be in a position to complete work related to thermal mass and provide a prescriptive way to present "empirical evidence".

HUD, in the interim, does not wish to preclude energy credits being given for thermal mass and continues to believe that this can best be done on a case-by-case basis. The Department of Energy, the National Bureau of Standards, Oak Ridge National Laboratories and Lawrence Berkeley Laboratory believe that reasonably accurate thermal mass analysis can be obtained using the DOE II and BLAST computer programs, which are available to the public sector. Such analysis has been, is and can be used to develop the empirical data required by section 607-1.2 of Handbook 4910.1.

The Department has therefore concluded that the energy efficiency requirements contained in the MPS for Multifamily Housing are appropriate as well for care-type housing as proposed.

Some commenters also asked that HUD retain Local Acceptable Standards (LAS's) for masonry thermal mass in Arizona and Florida until HUD completes work related to the thermal mass issue. HUD will continue to retain LAS's for thermal mass in Arizona and Florida until it completes work related to this issue.

B. Fire Safety

Two commenters were concerned because some fire resistance ratings in model codes are less restrictive than those now in the MPS for Care-type Housing. The commenters were particularly concerned about the ratings for unprotected wood frame construction, rated construction between patient rooms, and compartmentation.

Several nursing home fires in the early seventies prompted improvements in fire safety features such as smoke detectors, sprinkler systems and compartmentation. HUD's means of improving the MPS, however, did not always match other standard setters' methods of accomplishing the same end. Care-type housing that has been built since then with either the improvements in the MPS or model codes, however, has had an excellent fire safety record.

The Department has reviewed these improved fire safety requirements in the model codes, in detail, and found them to provide protection to nursing home patients that is comparable to that previously provided by the MPS for Care-type Housing. Therefore, the Department has concluded that it would be appropriate to rely upon the fire safety requirements of the model codes referenced in the MPS, HUD Handbook 4910.1.

C. Accessibility

Two comments concerned HUD's decision to reference the Uniform Federal Accessibility Standards (UFAS) in the proposed rule. One comment supported the proposed rule. The other comment recommended that HUD continue to reference the ANSI (American National Standards Institute) accessibility standard used in most model, State and local building codes and thereby minimize unnecessary conflicts and possible increased costs.

Section 504 of the Rehabilitation Act of 1973 and the Architectural Barriers Act of 1968, however, require federally funded buildings to comply with UFAS, a standard that now differs little from the recently revised ANSI standard. Although all housing assisted by HUD is not federally funded, additional regulations for other housing assisted by HUD would be confusing. HUD has therefore decided to reference UFAS for all housing as proposed.

D. Carpet

One commenter asked whether or not the proposed rule included a reference to HUD's Use of Materials Bulletin (UM) 44c as the standard for carpet. The comment stressed the importance that such a reference be included because it is the only national standard for carpet.

Section 509-4 in HUD Handbook 4910.1 now requires carpet to comply with UM 44c. With this final rule, Handbook 4910.1 will continue to reference UM 44c.

III. Miscellaneous Information

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. The rule does not: (1) Have an annual effect on the economy of one hundred million dollars or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule does not alter the current practice by which care-type housing is designed or constructed. This rule will generally reduce the existing burden of compliance for both small and large entities. In all cases, care-type structures must be built in compliance with local codes. Upon the effective date of this rule, the Department generally will accept such compliance as satisfying the Department's concerns relating to the health and safety aspects of those structures.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of Rules Docket Clerk at Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

This rule was listed as Sequence Number 854 in the Department's Semiannual Agenda of Regulations published on April 21, 1986 at 51 FR 14036 under the Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2502-0321.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, Incorporation by reference.

Accordingly, 24 CFR Part 200 is amended as follows:

PART 200—INTRODUCTION

Subpart S—Minimum Property Standards

1. The authority citation for 24 CFR Part 200 is revised to read as follows:

Authority: Titles I and II of the National Housing Act (12 U.S.C. 1701–1715z–18); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart G is issued under sec. 214, Housing and Community Development Act of 1980, as amended by sec. 329, Housing and Community Development Amendments of 1981 (42 U.S.C. 1436a).

2. Section 200.925a is amended by revising the section heading and paragraph (c) introductory text, and adding the OMB number to the end of the section to read as follows:

§ 200.925a Multifamily and care-type minimum property standards.

* * * * *

(c) *Standard for Evaluating Local Building Codes.* The Secretary shall compare the portions of a local or State building code applicable to residential or institutional occupancy, as appropriate, submitted under § 200.925a(d) to the list of construction related areas contained in § 200.925b.

* * * * *

(Approved by the Office of Management and Budget under OMB control number 2502–0321)

3. Section 200.925b is amended by revising the section heading to read as follows:

§ 200.925b Residential and institutional building code comparison items.

4. Section 200.925c is amended by revising paragraph (b)(1)(i) to read as follows:

§ 200.925c Model codes.

* * * * *

(b) * * *

(1) * * *

(i) Those provisions of the model codes that do not pertain to residential or institutional buildings.

* * * * *

5. 24 CFR Part 200 is revised by removing the word "multifamily" and inserting, in its place, the words "multifamily or care-type" wherever the word appears in each of the sections listed below:

§ 200.925a(a) introductory text, (d)(1)(i)(A), (d)(3)(i), and (ii).

§ 200.925c(b)(1) introductory text, and (ii), and (c) introductory text.

6. Section 200.929 is amended by revising paragraph (b)(2) as set forth below, by removing paragraph (b)(3), and by redesignating paragraph (b)(4) as new (b)(3), and amending newly redesignated paragraph (b)(3) by changing the reference to "paragraphs (b) (1), (2), and (3) of this section" to read "paragraphs (b) (1) and (2) of this section".

§ 200.929 Description and identification of minimum property standards.

* * * * *

(b) * * *

(2) MPS for Housing 4910.1, 1984 edition with changes. This volume applies to buildings and sites designed and used for normal multifamily occupancy, including both unsubsidized and subsidized insured housing, and to caretype housing insured under the National Housing Act.

* * * * *

7. Appendix A to Part 200 is changed by removing the references to "ANSI A117.1–80, Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People," and "ANSI A208.1–79, Mat Formed Wood Particleboard", and by changing the title to read as follows:

Appendix A to Part 200—Standards Incorporated by Reference in the Minimum Property Standards for Housing. (HUD 4910.1)

Dated: July 31, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant Secretary for Housing–Deputy Federal Housing Commissioner.

[FR Doc. 86–17920 Filed 8–8–86; 8:45 am]

BILLING CODE 4210-27-M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207, 251 and 255

[Docket No. R-86-1207; FR-1768]

Multifamily Housing Mortgage Insurance Assignment of Interests in Insured Mortgages

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

ACTION: Final rule.

SUMMARY: This final rule amends 24 CFR 207.261, 251.106 and 255.106 to permit an insured mortgagee (or coinsured lender) to transfer partial interests in an insured (or coinsured) multifamily mortgage or pool of multifamily mortgages through a mortgage participation agreement, without prior HUD consent. These transfers are subject to certain conditions designed to preserve the rights, benefits, and obligations of affected parties.

EFFECTIVE DATE: October 3, 1986.

FOR FURTHER INFORMATION CONTACT: James T. Tahash, Director, Program Planning Division, Office of Multifamily Housing Management, Room 6180, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 426–3970 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: HUD's regulation at 24 CFR 207.261(e) governs transfers of partial interests in insured multifamily housing mortgages through the use of mortgage participation agreements or arrangements. Under this regulation, an approved mortgagee may transfer a partial interest in an insured multifamily mortgage through a participation agreement or arrangement without the approval of the Federal Housing Commissioner if: (1) The insured mortgage is held by an approved mortgagee (principal mortgagee) subject to the inspection and supervision of a government agency authorized to make periodic audits; (2) the principal mortgagee retains a stated beneficial interest in the insured mortgage; (3) the holders of the partial interests fall within a described class; and (4) the participation agreement provides that the principal mortgagee will remain the holder of record and that the Commissioner will have no obligation to deal with any party except the mortgagee of record.

On October 10, 1984, the Department published a proposed rule to amend § 207.261 (49 FR 39688). The proposed rule would add a new paragraph (f). This paragraph would permit the sale or transfer of beneficial interests in all or any portion of an insured multifamily mortgage or pool of mortgages, without HUD approval, through the sale of mortgage participation certificates. The sale or transfer would be subject to the following conditions: (1) The insured mortgage or mortgages must be held by an approved mortgagee subject to the inspection and supervision of a government agency authorized to make periodic audits; (2) the insured mortgagee must retain legal title to the mortgage; and (3) the agreement under which the interest is transferred will provide that the insured mortgagee will remain the mortgagee of record, that neither HUD nor the mortgagor will have any obligation to recognize or deal with any party except the mortgagee of record (or a servicing agent in the case of the mortgagor), and that the mortgage documents will remain in the custody of the insured mortgagee (or a custodial agent). HUD believed that this amendment would encourage the addition of capital into the mortgage markets by permitting insured mortgagees to more freely transfer interests in insured mortgages.

Interested parties were invited to submit comments by December 10, 1984. HUD received four comments, all of which indicated support for the proposed rule. However, based on commenters' suggested changes, the final rule differs from the proposed rule in some material respects, as discussed below.

Transfer Under Participation Agreements or Arrangements

The proposed rule would apply to transfers made through mortgage participation certificates. Transfers of interests under other forms of participation agreements or arrangements would be subject to the more rigorous requirements of 24 CFR 207.261(e). While the commenters generally supported the addition of new paragraph (f), some urged the Department to make similar changes to the provisions governing transfer of interests under other forms of mortgage participation agreements and arrangements.

We agree. There is no legal need to distinguish between the interest created by a transfer under a mortgage participation agreement or arrangement and that created under a mortgage participation certificate. Nor can the Department identify any compelling policy justification for treating these transfers differently. Accordingly, the final rule has been revised to apply the same requirements for all transfers of partial interests under participation agreements or arrangements.

Applicability to Parts 251 and 255

The proposed amendments were applicable to Part 207 and did not affect Part 251—Coinsurance for the Construction or Substantial Rehabilitation of Multifamily Housing Projects, and Part 255—Coinsurance for the Purchase or Refinancing of Existing Multifamily Housing Projects. One commenter urged that the changes to Part 207 should also be reflected in these two parts.

The notice of proposed rulemaking did not specifically state that the proposed rule would be applicable to coinsured mortgages. However, the purpose of the proposed rule was to encourage the addition of capital into the mortgage market by liberalizing the procedures requiring prior HUD approval for the transfer of interests in multifamily mortgages. Since the provisions governing the sale and assignment of coinsured mortgages under parts 251 and 255 are similar to and based upon the procedures in existing § 207.261, and since the amendment of Parts 251 and 255 procedures will also further the announced purpose of adding capital to the mortgage market, the Department has concluded that the suggested changes are within the scope of this rulemaking and should be incorporated in this final rule.

The extension of this rule to coinsured mortgages should not have a significant detrimental impact on any party since the requirements for transfer are generally less stringent than provided under existing rules. Moreover, in the past HUD has approved, on a case-by-case basis, the transfer of partial interests in coinsured mortgages through mortgage participation agreements that do not meet the stated requirements of § 251.106 or § 255.106. HUD has found that its interests and the interests of the mortgagor and the holders of the partial interests can be adequately protected by the restrictions included in this amendment to § 207.261, as discussed below. These conditions are included in the amendments to Parts 251 and 255.

In addition to the conditions imposed in § 207.261, the coinsurance provisions also include conditions designed to alert potential investors concerning the nature of the interest that they have acquired. Mortgagees holding mortgages under Part 207 are insured by a Federal Housing Administration insurance fund against risk of significant loss under the contract of mortgage insurance. Thus, if the participants share in the insurance payments in the same manner as the mortgage payments, these mortgagees do not pass a risk of significant loss to the transferee under a mortgage participation arrangement. Under the coinsurance programs, however, the coinsuring lender assumes a risk of significant loss and may effectively pass this risk to holders of participating interests, unless the participation agreement or arrangement provides that the holders are entitled to receive funds other than the insurnace payment. In the past, this situation was acceptable because the coinsurance provisions permitted transfers to a limited class of more sophisticated investors (*ie.*, lenders approved by the Commissioner or qualified pension funds, retirement funds and profit sharing plans). The final coinsurance regulations adopted here, however, include no restrictions on the class of transferees. The Department fears that many of these new, potentially unsophisticated, transferees may confuse the coinsurance programs with other FHA mortgage insurance programs, or otherwise may be unaware of their risk of loss under the coinsurance program.

To alert these investors to their potential risk, the coinsurance regulations require that the instrument under which the interest in the coinsured mortgage is transferred (including such documents as the declaration of trust, participation agreement and participation certifiate) disclose: (1) That the coinsured lender has assumed a specified portion of the risk of loss on the insured mortgage or pool or mortgages; (2) whether the transfer will shift any portion of this risk of loss to the holder of the partial interest; and (3) that no FHA-administered insurance fund will pay benefits to protect against any risk of loss assumed by the coinsured lender and transferred to any holder of the partial interest.

Protection of GNMA interests

The final rule contains two clarifying changes affecting the Government National Mortgage Association (GNMA).

Existing § 207.261 does not address the transfer of interests in, or assignment of, mortgages backing GNMA securities. Existing coinsurance regulations, on the other hand, include conditions specifically designed to protect the interests of GNMA in similar transactions. (*See* §§ 251.106(d) and 255.106(d), redesignated as §§ 251.106(c) and 255.106(c) in this final rule.) The Department is concerned that the presence of GNMA requirements in Parts 251 and 255 and the absence of any similar requirements in Part 207 erroneously suggest that mortgages under Part 207 are assignable and partial interests are transferable, without regard to GNMA. To correct this potential ambiguity, GNMA's existing policies regarding such sales and transfers have been incorporated in revised § 207.261(f).

Additionally, this final rule clarifies the GNMA requirements for the assignment of, and the transfer of partial interests in, coinsured mortgages under Part 255. Currently, Part 255 requires GNMA approval for the assignment of coinsured mortgages that are used to back securities guaranteed by GNMA. The regulation does not, however, contain provisions to protect GNMA interests in transactions involving the transfer of *partial* interests in such mortgages. This rule adds a provision (§ 255.106(c)(2)) providing GNMA safeguards similar to those provided in §§ 207.261(f) and 251.106(c)(2) with respect to such partial interests. Any partial interest in the coinsured mortgage must terminate as of the time of release (delivery) of GNMA guaranteed Project Loan Certificates. No partial interest may exist in a mortgage backing GNMA Project Loan Certificates. (Unlike § 251.106, revised § 255.106 does not refer to GNMA Construction Loan Certificates, because coinsured mortgages under Part 255 involve the purchase or refinancing of existing multifamily projects. Thus, these mortgages are not used to back such certificates.)

While these two technical changes were not included in the proposed rule, the Department has concluded that it is unnecessary to seek public comment on these issues. These amendments are relatively minor and should have an insignficant impact. They represent a mere codification of existing GNMA policy. No one should be affected by this change since all parties are already acting under the policy expressed in the revision.

Form of Agreement

Two commenters suggested that the final rule should be revised to provide specifically that partial interests may be transferred under either a trust agreement or a participation agreement.

As long as the substantive requirements of the rule are satisifed, the type of participation agreement or arrangement employed to transfer the partial interest is not restricted by the Department. For clarity, however, the final rule will specifically refer to transfers "under a participation agreement or arrangement (such as a declaration of trust or the issuance of pass-through certificates)."

Periodic Examination of Books and Accounts of Holder-Mortgagee

As proposed, § 207.261(f)(1) would require that legal title to the insured mortgage or mortgages must be held by an approved mortgagee "subject to the inspection of a governmental agency authorized by law to make periodic examinations of its books and accounts." One commenter suggested that the inspection requirement be eliminated.

This inspection requirement essentially limits the class of qualified transferors to supervised mortgagees under 24 CFR 203.3. Upon reconsideration, the Department has concluded that as long as a mortgagee satisfies the requirements necessary to maintain its FHA-approved mortgagee status, a further test of eligibility is not necessary. (This result is in accordance with other HUD regulations governing the transfer of interests under participation agreements, e.g., 24 CFR 203.435(a), 203.495(a), 251.106(c)(1)(i) and 255.106(c)(1)(i). These latter two regulations have been redesignated as §§ 251.106(b)(1) and 255.106(b)(1) in this rule.) The final rule has been amended accordingly.

Perfection of Security Interests

Under the proposed regulations, HUD requires that legal title to, and custody of, the insured mortgage remain with the insured mortgagee or an agent of the insured mortgagee.

One commenter objected to this requirement claiming that "institutional investors and lenders purchasing beneficial interest certificates in the insured mortgage, or a trustee acting for such purchasers, would require a perfected, first lien security interest in the collateral of the insured mortgage and its proceeds. Depending on local law, such perfection may require a recorded assignment for security purposes and delivery of the mortgage documents for security purposes to the trustee or secured party." The commenter urged a revision which would "permit a perfected security assignment in the holder of 100% of the beneficial interest in the mortgage while maintaining the role of the HUD-approved mortgagee of record." This recommendation is not adopted in the final rule.

Under local law, perfection of the security interest usually requires the transferee to obtain custody of the mortgage documents, assignment of the mortgage and endorsement of the note, and recordation of these items in appropriate land records. Despite the fact that these actions would be made only for security purposes, the legal effect of these actions is that the transferee becomes the mortgagee under the insured loan. To protect HUD's interests and to assure that such transferees are capable of fulfilling their duties under the contract of insurance, it has been HUD's consistent policy to permit such transfers only under §§ 207.261 (c) or (d), 251.106(a) or 255.106(a).

Moreover, the Department is not convinced that this rule is unworkable without the proposed revision. As noted above, HUD has approved, on a case-by-case basis, a number of transfers of 100 percent of the beneficial interest in mortgages. These transfers have been successfully consummated without the changes suggested by the commenter.

Miscellaneous

This final rule has eliminated the requirement that the principal mortgagee or principal lender must retain custody of the mortgage documents. The Department has concluded that this requirement is overly restrictive in light of the remaining requirements that legal title to the insured mortgage or mortgages must be held by the principal mortgagee (or principal lender). Other minor editorial and clarifying changes have been made to the text of the final rule.

Findings

This rule does not constitute a "major rule" as that term is term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued on February 17, 1981. Analysis of the rule indicates that it will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, at the address listed above.

Under 5 U.S.C. 605 (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a siginficant economic impact on a substantial number of small entities. The final rule merely liberalizes present procedure by eliminating the need to request prior HUD approval for certain transfers of partial interests in multifamily mortgages.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB control number is 2502–0331.

This rule was listed as item 864 in the Department's Semiannual Agenda of Regulations published on April 21, 1986 (51 FR 14036, 14059) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are: 14.134, 14.135, 14.137 and 14.155.

List of Subjects

24 CFR Part 207

Mortgage insurance, Rental housing, Mobile home parks.

24 CFR Part 251

Mortgage insurance, Coinsurance of multifamily mortgages.

24 CFR Part 255

Mortgage insurance, Coinsurance of multifamily mortgages.

Accordingly, 24 CFR Parts 207, 251 and 255 are amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for Part 207 continues to read as follows:

Authority: Secs. 207 and 211 of the National Housing Act (12 U.S.C. 1713 and 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 207.261 is amended by revising paragraphs (e) and (f) to read as follows:

§ 207.261 Assignment of insured mortgages.

* * * * *

(e) *Transfer of partial interest under participation agreement.* A partial interest in an insured mortgage or pool of insured mortgages may be transferred under a participation agreement or arrangement (such as a declaration of trust or the issuance of pass-through certificates), without obtaining the approval of the Commissioner, if the following conditions are met:

(1) Legal title to the insured mortgage or mortgages shall be held by an approved mortgagee which, for the purposes of this paragraph (e), shall be referred to as the principal mortgagee;

(2) The participation agreement, declaration of trust or other instrument under which the partial interest is transferred shall provide that: (i) The principal mortgagee shall remain mortgagee of record under the contract of mortgage insurance; (ii) the Commissioner shall have no obligation to recognize or deal with anyone other than the principal mortgagee with respect to the rights, benefits, and obligations of the mortgagee under the contract of insurance; and (iii) the mortgagor shall have no obligation to recognize or do business with anyone other than the principal mortgagee or its servicing agent with respect to rights, benefits, and obligations of the mortgagor or the mortgagee under the mortgage.

(f) *Government National Mortgage Association requirements.* (1) If the insured mortgage is used to back securities guaranteed by the Government National Mortgage Association (GNMA), GNMA approval is required for the assignment of the pooled mortgage.

(2) When an insured mortgage is to be in a GNMA mortgage pool backing one or more GNMA Project Loan Certificates, the mortgagee-issuer and the holder of a partial interest under paragraph (e) of this section must certify that the interest shall terminate as of the release (delivery) of the Project Loan Certificates. No partial interest may exist in mortgages backing GNMA Construction Loan Certificates or GNMA Project Loan Certificates.

* * * * *

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

3. The authority citation for Part 251 is revised to read as follows:

Authority: Secs. 211 and 244, National Housing Act (12 U.S.C. 1715b and 1715z(9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 251.106 is revised to read as follows:

§ 251.106 Assignment of and participation in coinsured mortgages.

(a) *Assignment of coinsured mortgage.* (1) A lender may assign a coinsured mortgage to another lender if the following requirements are satisfied:

(i) The assignee is a HUD-approved coinsuring lender;

(ii) The lender shows good cause for the assignment;

(iii) The Commissioner finds that the assignment is for good cause and that there will be no disadvantage to HUD; and

(iv) The Commissioner gives prior written approval for the assignment and any risk allocation between assignor and assignee.

(2) The lender must inform HUD promptly following the assignment of any coinsured mortgage. The lender will not be relieved of its obligation to pay Mortgage Insurance Premiums until HUD has received this notice.

(b) *Transfer of partial interest under participation agreement.* A partial interest in a coinsured mortgage or pool of coinsured mortgages may be transferred under a participation agreement or arrangement (such as a declaration of trust or the issuance of pass-through certificates), without obtaining the approval of the Commissioner, if the following conditions are met:

(1) Legal title to the coinsured mortgage or mortgages shall be held by an approved coinsuring lender, which shall for purposes of this paragraph (b), be referred to as the principal lender;

(2) The participation agreement, declaration of trust or other instrument under which the partial interest is transferred shall provide that: (i) The principal lender shall remain the lender of record under the contract of coinsurance; (ii) the Commissioner shall have no obligation to recognize or do business with anyone other than the principal lender with respect to the rights, benefits and obligations of the lender under the contract of coinsurance; and (iii) the mortgagor shall have no obligation to recognize or do business with anyone other than the principal lender or its servicing agent with respect to the rights, benefits and obligations of the mortgagor or the lender under the coinsured mortgage; and

(3) The participation agreement, declaration of trust or other instrument under which the interest is transferred shall disclose: (i) That the principal lender has assumed a stated percentage of the risk of loss under the coinsured mortgage or mortgages; (ii) whether the transfer of the partial interest will shift any portion of the risk of loss to the holder of the partial interest; and (iii) that no insurance fund administered by HUD will pay benefits to protect against any risk of loss assumed by the principal lender and transferred to the holder of the partial interest.

(c) *Government National Mortgage Association requirements.* (1) If the Coinsured Mortgage is used to back securities guaranteed by the Government National Mortgage Association (GNMA), GNMA approval is required for the assignment of the pooled mortgage.

(2) When a coinsured mortgage is to be in a GNMA mortgage pool backing one or more GNMA Project Loan Certificates, the lender-issuer and the holder of a partial interest under paragraph (b) of this section must certify that the interest shall terminate as of the release (delivery) of the Project Loan Certificates. No partial interest may exist in mortgages backing GNMA Construction Loan Certificates or GNMA Project Loan Certificates.

(Approved by the Office of Management and Budget under OMB Control Number 2502–0331)

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

5. The authority citation for Part 255 is revised to read as follows:

Authority: Secs. 211 and 244, National Housing Act (12 U.S.C. 1715b and 1715z(9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. Section 255.106 is revised to read as follows:

§ 255.106 Assignment of and participation in coinsured mortgages.

(a) *Assignment of coinsured mortgage.* (1) A lender may assign a coinsured mortgage to another lender if the following requirements are satisfied:

(i) The assignee is a HUD-approved coinsuring lender;

(ii) The lender shows good cause for the assignment;

(iii) The Commissioner finds that the assignment is for good cause and that there will be no disadvantage to HUD; and

(iv) The Commissioner gives prior written approval for the assignment and any risk allocation between assignor and assignee.

(2) The lender must inform HUD promptly following the assignment of any coinsured mortgage. The lender will not be relieved of its obligation to pay mortgage insurance premiums until HUD has received this notice.

(b) *Transfer of partial interest under participation agreement.* A partial interest in a coinsured mortgage or pool of coinsured mortgages may be transferred under a participation agreement or arrangement (such as a declaration of trust or the issuance of pass-through certificates), without obtaining the approval of the Commissioner, if the following conditions are met:

(1) Legal title to the coinsured mortgage or mortgages shall be held by an approved coinsuring lender, which shall for purposes of this paragraph (b), be referred to as the principal lender;

(2) The participation agreement, declaration of trust or other instrument under which the partial interest is transferred shall provide that: (i) The principal lender shall remain the lender of record under the Contract of Coinsurance; (ii) the Commissioner shall have no obligation to recognize or do business with anyone other than the principal lender with respect to the rights, benefits or obligations of the lender under the Contract of Coinsurance; and (iii) the mortgagor shall have no obligation to recognize or do business with anyone other than the principal lender or its servicing agent with respect to the rights, benefits and obligations of the mortgagor or the lender under the coinsured mortgage; and

(3) The participation agreement, declaration of trust or other instrument under which the interest is transferred shall disclose: (i) That the principal lender has assumed a stated percentage of the risk of loss under the coinsured mortgage or mortgagees; (ii) whether the transfer of the partial interest will shift any portion of the risk of loss to the holder of the partial interest; and (iii) that no insurance fund administered by HUD will pay benefits to protect against the risk of loss assumed by the principal lender and transferred to the holder of the partial interest.

(c) *Government National Mortgage Association Requirements.* (1) If the coinsured mortgage is used to back securities guaranteed by the Government National Mortgage Association (GNMA), GNMA approval is required for the assignment of the pooled mortgage.

(2) When a coinsured mortgage is to be in a GNMA mortgage pool backing one or more Project Loan Certificates, the lender-issuer and the holder of a partial interest under paragraph (b) of this section must certify that the interest shall terminate as of the release (delivery) of the Project Loan Certificates. No partial interest may exist in mortgages backing GNMA Project Loan Certificates.

(Approved by the Office of Management and Budget under OMB Control Number 0502-0331)

Dated: August 6, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 86-18079 Filed 8-8-86; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

[Docket No. R-86-1302; FR-2254]

Rental Rehabilitation Program; Revision to Mandatory Deobligation of Grant Amounts and Other Miscellaneous Revisions

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

ACTION: Final rule.

SUMMARY: The current regulations require that HUD deobligate any rental rehabilitation grant amounts that are not committed to specific local projects within two years of receipt by the grantee (three years, if a State distributed the grant amount to State recipients) or are not expended for eligible costs within four years of receipt by the grantee (five years, if a State distributed the grant amount to State recipients). This rule provides that, on a case-by-case basis, HUD may extend for one year any of these time periods. This revision is intended to avoid deobligation of grant amounts in situations where the grantee's overall administrative performance has been sound and the amounts are likely to be used by the original grantee within the extended period. HUD retains discretionary authority to deobligate grant amounts that are not committed to specific local projects in conformity with the schedule submitted by the grantee as part of its program description. In addition, this rule makes a change to conform the rental rehabilitation regulations to an amendment to the authorizing legislation effected by the Technical Amendments Act of 1984 and revises the formula for calculating allocations to permit data for areas eligible for assistance under Title V of the Housing Act of 1949 to be used in calculating allocations for urban counties and cities.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the **Federal Resister.**

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Acting Director, Rental Rehabilitation Division, Office of Urban Rehabilitation, Room 7164, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-7000, telephone (202) 755-5970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 17 of the United States Housing Act of 1937 (the 1937 Act), 42 U.S.C. 1437o, established the Rental Rehabilitation Program. This Program provides grants to States and units of general local government to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes. The program is designed to increase the supply of standard housing units affordable to lower income families. This objective is achieved by: (1) Providing Rental