

that constitute 10% or more of the registrant's total assets?

Interpretive Response: In annual reports filed with the Commission, the staff has advised registrants that separate audited financial statements should be provided for each non-consolidated investment-type arrangement that is 20% or more of the registrant's total assets. While the distribution is on-going, however, the percentage may be calculated using the greater of (i) the amount of the minimum proceeds or (ii) the total assets of the registrant, including the amount of proceeds raised, as of the date the filing is required to be made. In annual reports to shareholders registrants may either include the separate audited financial statements for 20% or more non-consolidated investment-type arrangements or, if those financial statements are not included, present summarized financial information for those arrangements in the notes to the registrant's financial statements.

The staff has also indicated that separate summarized financial information (as defined in Rule 1-02.(aa) of Regulation S-X) should be provided in the footnotes to the registrant's financial statements for each non-consolidated investment-type arrangement that is 10% or more but less than 20%. Of course, registrants should also make appropriate textual disclosure with respect to material investment-type arrangements in the "business" and "property" sections of their annual reports to the Commission.²

Question 7: What information should be provided in annual reports filed under the Exchange Act with respect to investment-type arrangements that do not meet the 10% threshold?

Interpretive Response: The staff believes it will not be necessary to provide any financial information (full or summarized) for investment-type arrangements that do not meet the 10% threshold. However, in the staff's view, where such arrangements aggregate more than 20%, a narrative description of the general character of the properties and arrangements would be necessary. The staff believes that information should be included that would give an investor an understanding of the risks and rewards associated with these arrangements. Such information may, for example, include a description of the terms of the arrangements, participation

by the registrant in expected residual profits, and property types and locations. Of course, disclosure regarding the operations of such components should be included as part of the Management's Discussion and Analysis where there is a known trend or uncertainty in the operations of such properties, either individually or in the aggregate, which would be reasonably likely to result in a material impact on the registrant's future operations, liquidity or capital resources.

Question 8: What consideration will be given by the staff to those registrants that are unable to obtain the requisite information with respect to investment-type arrangements entered into prior to SAB 71?

Interpretive Response: For transactions with unaffiliated parties closed before December 15, 1987, the staff has taken the position that the disclosures contemplated by SABs 71 and 71A should be included unless the registrant has no contractual right to such information and cannot practicably obtain such information. In that event, the filing in which the information otherwise would be included should clearly state that the information is not included because the registrant has no contractual right to the information and cannot otherwise practicably obtain the information.

For transactions with unaffiliated parties closed on or after December 15, 1987, the staff believes that the information should be included in all filings. The staff believes information with respect to any transaction with an affiliate is available to the registrant and should therefore be provided regardless of the date of the transaction.

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BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 87-150]

Customs Regulations Amendments Concerning Reporting Requirements for Small Vessels

AGENCY: Customs Service; Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document sets forth interim amendments to the Customs Regulations to implement recent legislative changes to enhance Customs enforcement of the currency reporting

and controlled substances laws and assist in preventing the importation of merchandise contrary to law. The statutory changes concern reporting requirements for individuals and vessels, penalties, searches and seizures. To clarify vessel reporting requirements and to implement new vessel reporting requirements for small vessels arriving in the Miami, Florida, Customs District, operations of small vessels arriving in that area will be required to stop at one of 14 designated locations and, through a clearly marked Customs telephone, report their arrival to the U.S. to Customs before proceeding to their destination. In addition to the reporting requirements, the amendments also implement legislative provisions which provide for civil and criminal monetary penalties and for the seizure and forfeiture of conveyances used to transport unmanifested merchandise or controlled substances as well as the merchandise thereon.

This action is being taken as part of Customs continuing efforts to interdict the smuggling of controlled substances and other merchandise being introduced contrary to law into the southern Florida area and to enforce the currency reporting laws. These regulations will close a loophole in interdiction efforts concerning the significant number of small vessels arriving in that area carrying controlled substances, unreported monetary instruments, or undeclared merchandise.

DATES: Effective: December 21, 1987. Written comments must be received on or before February 19, 1988.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Customs Service Headquarters, Room 2324, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: (Operational matters) Glenn Ross, Office of Passenger Enforcement and Facilitation (202-566-5607) or (Legal matters) Larry L. Burton, Carriers, Drawback and Bonds Division (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

The Anti-Drug Abuse Act of 1986 (Pub. L. 99-570) (the Act), made various changes to the Tariff Act of 1930 relating to the arrival in the U.S. and the reporting to Customs of persons and transportation conveyances; penalties; search and seizure of persons and conveyances; forfeiture and disposition of articles and conveyances; the Customs Forfeiture Fund; aviation

² Registrants are reminded that in filings on Form 8-K that are triggered in connection with an acquisition of an investment-type arrangement, separate audited financial statements are required for any such arrangement that individually constitutes 10% or more.

smuggling; preclearance; and investigation matters such as records production; undercover Customs operations; informer compensation; and the exchange of information with domestic and foreign Customs and law enforcement agencies. The reporting requirements are consolidated in section 433, Tariff Act of 1930, as amended (19 U.S.C. 1433), which provides, in pertinent part, that vessels must generally report to Customs immediately upon their arrival in the U.S. and in such manner as the Secretary of the Treasury may prescribe by regulation. The Act further amended section 401(k), Tariff Act of 1930, as amended (19 U.S.C. 1401(k)), to clarify that a vessel arriving in the U.S. after visiting a hovering vessel or a point or place where it has received merchandise is deemed to be arriving from a foreign port or place and that controlled substances are generally to be considered as prohibited merchandise. The Act further amended section 594, Tariff Act of 1930, as amended (19 U.S.C. 1594), relating to the seizure and forfeiture of conveyances used for the importation of prohibited merchandise, by narrowing and clarifying the previously existing exceptions to the seizure and forfeiture provisions of that section. This document implements the arrival, reporting, and conveyance seizure and forfeiture provisions of the Act as to "small vessels", as defined. Initially, special procedures for reporting arrivals of small vessels will be limited to arrivals within the Miami, Florida, Customs District, as defined in § 101.3(b), Customs Regulations (19 CFR 101.3(b)). Operations of small vessels arriving in the U.S. in that area will be required to stop at one of 14 small vessel reporting locations before proceeding to their intended destination and, through a clearly marked Customs telephone, immediately report their arrival to Customs. The Customs officer answering the call will ask for information such as: vessel registration number, name of vessel, owner name, operator/passenger name(s), date(s) of birth, foreign ports or places visited, duration of stay, foreign acquisitions, and user fee decal number, if any. The Customs officer will then instruct the vessel operator that the vessel may proceed or that further action, which may include inspection/examination at another location, is required. The District Director of Customs at Miami will retain the authority to change the nature of reporting locations, their number, or locations. However, initially the following 14 small vessel reporting

stations are being designated within the Miami, Florida, Customs District:

Vessels Entering The Southern & Western Portions of the Miami District

1. A & B Marina 700 St., Key West, Florida 33040.
2. Tavernier Creek Marina, P.O. Box 1000, Tavernier, Florida 33070.
3. Faro Blanco Marine Resort, 1996 Overseas Highway, Marathon, Florida 33050.

Vessels Entering The Northern Portion of the Miami District

1. Government Cut, Phillips 66 Marine, Watson Island, 1050 MacArthur Causeway, Miami, Florida 33132.
2. Haulover Cut, Bakers Haulover Marina, 10800 Collins Ave., Miami Beach, Florida 33154.
3. Port Everglades Cut, Lauderdale Marina, 1900 S.E. 15th St., Ft. Lauderdale, Florida 33316.
4. Hillsboro Inlet, Sands Harbor Marina/Hotel, 125 North Riverside Dr., Pompano Beach, Florida 33062.
5. The Cove Marina, 1755 S.E. 3rd Court, Deerfield Beach, Florida 33441.
6. Boynton Beach Inlet, Lake Worth Boating Center, 7848 South Federal Highway, Hypoloxo, Florida 33462.
7. Lake Worth Inlet (AKA Palm Beach), Sailfish Marina, 98 Lake Drive, Palm Beach Shores, Florida 33404.
8. Jupiter Inlet, Jupiter Marina, Route 1, Jupiter, Florida 33494.
9. St Lucie Inlet, Sailfish Marina, 3565 Southeast St., Stuart, Florida 33477.
10. Ft. Pierce Inlet, Pelican Yacht Club, 1120 Seaway Dr., Ft. Pierce, Florida 33454.
11. Sebastian Inlet, Sebastian Inlet Marina and Trading, 1580 U.S. 1, P.O. Box 1507, Sebastian, Florida 32958.

In addition to establishing procedures for reporting the arrival of small vessels in the Miami area, new § 4.2a, Customs Regulations (19 CFR 4.2a), also implements the provisions of the Act which provide for civil monetary penalties for the failure to report arrival and additional civil monetary penalties if unmanifested merchandise is found by Customs on board a non-reporting vessel. The vessel manifest penalties of section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), are made applicable if the merchandise found on board a non-reporting vessel consists of controlled substances. Criminal monetary penalties and imprisonment are provided for if the failure to report arrival is intentional and if controlled substances are found on board the non-reporting vessel. The civil penalty includes seizure and forfeiture provisions related to the vessel and the

merchandise in addition to the monetary penalties.

To clarify the vessel reporting requirements applicable to all vessels, § 4.2, Customs Regulations (19 CFR 4.2), is being amended to provide that vessel reporting requirements may be supplemented by local instructions and that a Customs officer may require documents and papers deemed necessary for the inspection/examination of vessels as well as cargo and persons on board. In addition, the new § 4.2a(b), Customs Regulations (19 CFR 4.2a(b)), will provide that small vessels in the Miami District will be considered to have arrived when they come to rest within the waters of that district, whether at anchor or at a dock, in any harbor or other location.

These new regulations are part of Customs continuing efforts to combat the problem of drug smuggling by vessel and to more specifically deal with techniques developed by drug smugglers utilizing small vessels for that purpose. Customs will now have greater control over small vessel movements in the southern Florida area because these vessels will now be required to go to designated reporting locations and immediately report their arrival. Thus, smugglers will not be able to proceed to private docks and unload contraband before continuing to their intended destination and then reporting their arrival to Customs. This was possible under the previously existing law and regulations which permitted the report of arrival to be delayed for as long as 24 hours after arrival in the U.S. The remaining provisions of the Anti-Drug Abuse Act of 1986 will be the subject of other Federal Register documents.

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2324, 1301 Constitution Avenue, NW., Washington, DC 20229.

Inapplicability of Notice and Delayed Effective Date Requirements

Inasmuch as these amendments implement a statutory change which is

already effective and because of critical drug interdiction requirements in southern Florida, it is deemed to be in the public interest to make the regulatory changes as soon as possible. Accordingly, the normal advance notice and public procedure are unnecessary pursuant to 5 U.S.C. 553(b)(B). For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12291

Because this document will not result in a "major rule" as defined in E.O. 12291, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Cargo vessels, Coastal zone, Customs duties and inspection, Fishing vessels, Freight, Harbors, Imports, Maritime carriers, Reporting and recordkeeping requirements, Seamen, Vessels and Yachts.

Amendments to the Regulations

Part 4, Customs Regulations (19 CFR Part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1624, and 46 U.S.C. 2, 3.

2. Part 4 is amended by removing footnote 3.

3. Section 4.2(a) is revised to read as follows:

§ 4.2 Reports of arrival of vessels.

(a) The report of arrival of vessels, required by section 433, Tariff Act of 1930, as amended (19 U.S.C. 1433), except as prescribed in § 4.2a of this chapter, or as supplemented in local instructions issued by the district director and made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation, and other appropriate means, shall be made by any means of communication to the

district director or to a Customs officer assigned to board a vessel. The Customs officer may require the production of any documents or papers deemed necessary for the proper inspection/examination of a vessel, cargo, passengers, or crew.

4. Part 4 is amended by adding a new § 4.2a to read as follows:

§ 4.2a Small vessel reporting of arrival, Miami District.

(a) *Scope.* This section imposes special requirements for the report of arrival from any foreign port or place by small vessels whose intended destination is at a point within the jurisdiction of the Miami, Florida, Customs District, as defined in § 101.3(b) of this chapter. The operators of small vessels will be required to immediately report their arrival in the U.S., as prescribed by § 4.2(a) of this chapter, or as supplemented in local instructions issued by the district director and made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation within the Miami District, and other appropriate means, by proceeding to locations designated by the District Director of Customs, Miami, Florida, prior to proceeding to their destination. The report will be made through a clearly marked Customs telephone. After securing some information from the person reporting, the Customs officer responding to the report of arrival will instruct the vessel operator that the vessel may proceed or that further action, which may include inspection/examination at another location, is required.

(b) *Definitions.* For the purposes of this section:

(1) "Foreign port or place" includes a hovering vessel as defined in section 401(b), Tariff Act of 1930, as amended, 19 U.S.C. 1401(k), and any point in the Customs waters beyond the territorial sea or on the high seas at which a vessel arriving in a port or place in the U.S. has received merchandise.

(2) "Small vessel" includes any vessel of less than 5 net tons, and any private pleasure vessel, regardless of displacement.

(3) "Arrival of a vessel" occurs when a small vessel comes to rest within the waters of the Miami District, whether at anchor or at a dock, in any harbor or other location.

(c) *Vessels entering the southern and western portions of the Miami District.* The operators of vessels arriving from a foreign port of place with an intended destination at a point south of the entrance to Biscayne Bay known as

Broad Creek, which is north of Key Largo between Swan Key and Board Key, or that portion of the west coast of the State of Florida within the Miami Customs District as described in § 101.3(b), of this chapter, shall immediately report their arrival by the use of special clearly marked Customs telephones provided for that purpose, at the Customs designated location in the Florida Keys nearest to their intended destination point, before proceeding to their destination point.

(d) *Vessels entering the northern portion of the Miami District.* The operators of vessels arriving from a foreign port or place with an intended destination at or north of the entrance to Biscayne Bay known as Broad Creek, which is north of Key Largo and between Swan Key and Board Key, shall immediately report their arrival by the use of special clearly marked Customs telephones provided for that purpose, at the Customs designated location nearest the point at which the Biscayne Bay may be first entered or the intracoastal waterway may be first entered through a "cut", "channel", or "inlet", before proceeding to their destination point. This provision shall apply to vessels whose intended destination is on the Florida mainland or the barrier islands east of the intracoastal waterway.

(e) *Penalties.*—(1) *Civil penalty.* The master or person in charge of any vessel who fails to report arrival as required under this section is liable for a civil penalty of \$5,000 for the first violation, and \$10,000 for each subsequent violation. Any vessel used in connection with any such violation is subject to seizure and forfeiture.

(2) *Criminal penalty.* In addition to the civil penalty prescribed for violation of this section, the master or person in charge of any vessel who intentionally fails to report arrival as required by this section is liable, upon conviction, for a fine of not more than \$2,000 or imprisonment for 1 year, or both. If the vessel is found to have, or to have had, on board any merchandise the importation of which is prohibited, such individual is liable for an additional fine of not more than \$10,000 or imprisonment for not more than 5 years, or both.

(3) *Additional civil penalty.* If any merchandise, other than sea stores, is imported or brought into the U.S. aboard a vessel which has failed to report arrival as prescribed by this section, the master or person in charge of the vessel shall be liable for a civil penalty equal to the value of the merchandise, and the merchandise may be seized and forfeited, unless properly entered by the

importer or consignee. If any of the merchandise consists of a controlled substance listed in section 584, Tariff Act of 1930, as amended 19 U.S.C. 1584, the penalties prescribed in that section shall apply.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: December 14, 1987.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87-29181 Filed 12-18-87; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 200, 203, 204, 213, 220, 221, 222, 226, 227, 235, 237, and 240

[Docket No. R-87-1357, FR-2382]

Mortgage Insurance for the Allegany Reservation of the Seneca Nation of Indians

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

ACTION: Interim rule.

SUMMARY: A new Section 203(q) of the National Housing Act authorizes the Secretary of HUD to insure mortgages on certain leased property in Salamanca, New York, within the Allegany Reservation of the Seneca Nation of Indians. The leases terminate in February 1991 unless renewed and the terms of renewal are uncertain. This rule explains the conditions under which the Secretary will insure mortgages on the leased property.

DATES: *Effective date:* Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), no part of this interim rule can become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice in the Federal Register of the effective date of §§ 200.163, 203.43c, 203.43j, 203.45, 203.50, 204.1, 220.1, 221.1, 222.1, 226.1, 227.501, 235.1, 237.5, and 240.1 of this rule following expiration of the 30-session-day waiting period. No part of this rule will become effective until HUD's separate notice concerning those sections is published announcing a specific effective date. The effective date for all other sections cannot precede the effective date of the rule on

the revised Temporary Mortgage Assistance Payments (TMAP) program (52 FR 6908), published on March 5, 1987, for which an effective date has not been published. An announcement of an effective date for such sections will be published in the Federal Register. HUD's best estimate of the revised TMAP program effective date is early June 1988.

Comment due date: February 19, 1988.

ADDRESS: All comments concerning this proposed rule should be addressed to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Persons submitting comments should include their names, addresses, and telephone numbers and refer to the docket number and title indicated in the heading of this rule. All comments submitted will be available for public inspection in the Office of the Rules Docket Clerk at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: John Coonts, Deputy Director, Insured Single Family Housing, Department of Housing and Urban Development, Room 9266, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-3046. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: A new section 203(q) of the National Housing Act (12 U.S.C. 1709(q)) was enacted by Pub. L. 99-601, November 5, 1986. This new provision authorizes the Secretary of HUD to insure mortgages on certain leased property within the Allegany Reservation of the Seneca Nation of Indians in the State of New York, without regard to statutory restrictions which would ordinarily prohibit mortgage insurance. A mortgage would be insured under section 203(b) of the National Housing Act as modified by section 203(q) of the Act and would be an obligation of the Special Risk Insurance Fund (SRIF) created by section 238 of the Act. (Under all SRIF programs, a periodic mortgage insurance premium is required by regulations instead of a one-time premium.)

Section 203(q) was needed before mortgage insurance could be granted because the property in question involves ground leases with terms expiring in February 1991 (with certain rights of extension). Section 201(a) of the National Housing Act requires leased property covered by an insured mortgage to be either "(1) under a lease for not less than ninety-nine years which is renewable or (2) under a lease having a period of not less than ten

years to run beyond the maturity date of the mortgage * * *." The second test clearly cannot be satisfied since the leases will expire in less than ten years. The first test is partially met since the leases involved are 99-year leases. However, their renewability is subject to complicating factors which, in the absence of section 203(q), would preclude mortgage insurance at this time. The Department has interpreted the statute as requiring a lease giving the lessee an absolute right to renew on specific terms. As discussed further in the following section, the leases in question do not provide for specific terms of renewal.

Background

The property affected by Pub. L. 99-601 and this rule consists of that part of the City of Salamanca, New York which is located on the Allegany Reservation of Seneca Nation of Indians and subject to ground leases expiring in February 1991. These ground leases were given by the Seneca Nation pursuant to the Act of February 19, 1875, 18 Stat. 330, which was enacted to ratify existing leases granted by the Seneca Nation and to clarify the future authority of the Seneca Nation to lease land in the Allegany Reservation. The 1875 law provided for continuation of existing leases for five years (until February 1880) with rights of renewal for periods of up to twelve years. Prior to expiration of the first twelve-year renewal period, Congress enacted the Act of September 30, 1890, 26 Stat. 558 which amended the 1875 law to allow renewals for periods up to 99 years. The subsequent renewals of the leases were for periods of 99 years which will expire in February 1991.

The 1875 law specified the manner of renewal. The "owner or owners of improvements" on leased lands at the time a lease term expires "shall be entitled" to lease renewal on "such conditions as may be agreed upon" with the Seneca Nation, up to the maximum allowed renewal period. If the parties to the lease cannot agree on conditions of renewal, the 1875 law states that they shall each appoint a "referee" (arbitrator) to "fix and determine the terms of said lease and the amount of annual rent to be paid." If agreement is not reached the two referees shall choose a third person to act with them. The decision of a majority of the persons so chosen shall be "final and binding" upon the parties. The lease forms used by the Seneca Nation adopted this renewal provision from the 1875 law.

For approximately 18 years, the Seneca Nation has been engaged in

discussions regarding lease renewal terms with the Salamanca Indian Lease Authority, which was created in 1969 by N.Y. *Public Authorities Law* section 179 *et seq.* (McKinney 1987). There is no clear authority for the Authority to bind individual lessees to any negotiated terms of renewal. In any event, HUD understands that the discussions between the Authority and the Seneca Nation are not likely to be successful in the near future. We are not aware of direct discussions between individual lessees and the Seneca Nation regarding lease renewal. We are not aware of any appointment of arbitrators by any party. The resulting uncertainty regarding the future rent or any other terms of lease renewals, and the possibility that agreement on renewal terms might not be reached before the leases terminate, if ever, means that the property interests which lessees may hold now and in the future are too uncertain to be accepted by prudent lenders as adequate security for long-term mortgage loans.

Currently, no private lending institutions will make uninsured mortgage loans for any property in Salamanca, NY which is subject to a lease expiring in February 1991. FHA-insured or VA-guaranteed mortgages have not been available for many years.

Purpose of the Rule

This rule is intended to make mortgage insurance available on terms which will permit prudent lenders to resume lending on the basis of the current leases. The rule should relieve a lender of its concern over the uncertain and possibly short-term property interests offered as security for mortgages.

The legislative history of section 203(q) suggests that Congress did not intend to authorize insurance of mortgages secured by property on short-term ground leases without regard to the prospects for renewal. Instead, it was assumed that the leases would be renewed for a longer term so that the ultimate security would be property which a mortgagor could hold for the life of the mortgage. For example, Congressman Lundine stated during floor debate:

This measure is revenue neutral. Further, it does not represent an unreasonable risk for FHA. The law under which these leases were ratified clearly allows for renewal of the leases; the only unresolved question is the terms of renewal. 132 Cong. Rec. H 8593 (daily ed. September 29, 1986).

HUD recognizes that it cannot obtain absolute assurance of a timely renewal of the lease and that, consequently, there is some risk that any mortgage loan insured under this rule could

ultimately become an unsecured loan—if there is never a renewal or replacement lease—or that the existence of security may be in doubt during any gap between the February 1991 termination date and a later renewal or replacement lease. Several provisions of this rule are designed to increase the chances that the lease will be renewed in a timely manner or, at least, that arbitration on a new lease will be instituted if a negotiated renewal is not possible.

The Department does not believe that Congress intended the Department to disregard the special difficulties presented by long-term mortgages secured by renewable leases with an impending termination date. Instead, we interpret the law as permitting HUD to relax the normal requirements for leasehold mortgages only if HUD reasonably expects appropriate steps to be taken toward renewal of the leases for periods commensurate with the mortgage terms.

Summary of Rule Provisions

New 24 CFR 203.43j contains the basic requirements for mortgage insurance for homes on property subject to Allegany Reservation ground leases.

Paragraph (a) (Title) establishes a special title requirement to substitute for § 203.37. Title to the leasehold must be held through a lease meeting two requirements: The lease must have a termination date in February 1991, and it must provide for renewal in accordance with the renewal scheme established by the 1875 and 1890 laws. This requirement represents an interpretation of the provision in section 203(q)(1)(B) that the insured mortgage "be secured by property on land that * * * is subject to a lease entered into for a term of 99 years pursuant to" the 1875 and 1890 laws. In the opinion of HUD, Congress intended to extend the coverage of section 203(q) to all residential leases on the Allegany Reservation with February 1991 termination dates, including a group of leases executed in 1944 for the remainder of the term of 99-year leases which had been cancelled for nonpayment of rent. (For background on the cancellation, see *U.S. v. Forness*, 125 F.2d 928 (2d Cir. 1942)). The reference to "99 years" in the statute should not be read narrowly to exclude leases which, in effect, completed a 99-year term and which present the same problem as the "true" 99-year leases. Paragraph (a) specifically excludes a mortgage secured by a replacement or renewal of a lease scheduled to terminate in February 1991, or by any other right of occupancy. This effectively establishes

February 1991 as the outside date for insurance under this rule.

Paragraph (b) (Provisions of mortgage) provides for additional material to be added as a rider to the approved New York mortgage form to address the special title circumstances, including authorization for the mortgagee to act for the mortgagor with regard to lease renewal, at mortgagor's expense, and special default provisions. HUD expects each mortgagor to pursue the issue of lease renewal with the Seneca Nation in a timely manner. Separate discussions could occur for each individual lease, many mortgagors/lessees could act together, or mortgagors/lessees may be represented by an entity such as the City of Salamanca or the Salamanca Indian Lease Authority. While we do not expect to draft mortgage language authorizing the mortgagee to negotiate on behalf of the mortgagor, mortgagees will be expected to keep track of a mortgagor's progress toward lease renewal. If recourse to arbitration is necessary because the lease has not been renewed by a date to be specified in the mortgage rider, and the mortgagor fails to pursue arbitration, the mortgagor will be in default under the mortgage and the mortgagee will be authorized through a power of attorney to name an arbitrator and take other steps to pursue arbitration, including seeking any needed assistance from a court. The mortgagee will also be able to foreclose based on the default.

Paragraph (c) (Secretary's agreement with mortgagor) requires a HUD-mortgagor agreement on steps to be taken toward lease renewal. At the discretion of the Secretary, other parties such as the Seneca Nation could be added. HUD would prefer to require an agreement which includes the Seneca Nation as a party, whereby the parties to each lease agree to commence arbitration. If the Seneca Nation is not agreeable to this approach, HUD expects each mortgagor to notify the Seneca Nation of the mortgagor's intent to renew the lease and to take appropriate steps to pursue arbitration if the lease has not been renewed by a date to be specified in the agreement. A power of attorney would enable HUD to pursue arbitration if necessary, including seeking any needed assistance from a court. Thus, HUD as well as the mortgagee would be legally entitled to take steps to ensure that the lease renewal rights are exercised through arbitration if negotiations do not succeed by a specified date, although HUD expects to rely on the mortgagee to take necessary action unless the mortgage has been assigned, or the

leasehold conveyed, to HUD. Nothing in any of these documents would require the parties to continue arbitration if agreement on renewal terms is reached.

Paragraph (d) (Certification) requires the mortgagor to certify receipt of certain disclosures about the lease situation. The disclosure must include a discussion of the fact that a mortgagor will remain liable for the balance of the mortgage principal even if the ground lease for the mortgagor's home is not renewed. Other risks expected to be disclosed are: The lack of assurance that the Seneca Nation will be interested in lease renewal on terms agreeable to the mortgagor, the power of arbitrators to issue a binding award requiring the mortgagor to renew the lease on unacceptable terms, the possible need to commence and pay for litigation to enforce the mortgagor's right of renewal, the fact that failure by the mortgagor to pursue arbitration after a specified date will be a mortgage default, the requirement that the mortgagor must give a power of attorney to the mortgagee and HUD, and the possible serious difficulty in selling the home until the ground lease is renewed. This disclosure requirement ensures that mortgagors will not be ignorant of the special risks presented by purchasing and mortgaging a short-term renewable leasehold estate.

Paragraph (e) (Purchase by owner-occupant) excludes from coverage of the rule any mortgages from investors or occupants purchasing a second home, or mortgages for refinancing. The rule is intended only to facilitate mortgage lending to owner-occupants purchasing a principal residence, since the primary purpose of section 203(q) is to make mortgage loans available to persons who could not otherwise obtain financing for purchase of their homes. However, public comment on this question is specifically requested.

Paragraph (f) (Relationship of income to housing expense) ensures that under § 203.33(a) the adequacy of the mortgagor's income would be tested against estimated future lease payments after renewal. Current rentals do not represent market value, will definitely increase substantially in any renewal lease, and should not be used in the mortgage credit analysis. Since the purpose of § 203.33(a) is to ensure that a mortgagor will be able to meet expenses, HUD expects initially to use as the estimated future rent level the highest level proposed by the Seneca Nation in negotiations until HUD has reason to conclude that a lesser rent level is a likely outcome of negotiations or arbitration.

Paragraph (g) (Suspension of insurance) provides for possible suspension of further issuance of commitments to insure mortgages under this rule. A suspension could be for the remaining life of the program (through February 1991) or for a lesser period specified by the Secretary. A suspension could be imposed prior to February 19, 1990, if the rate of 90-day delinquencies during a specified period exceeds the general rate of 90-day delinquencies for all one-to-four family properties in the State of New York. A suspension could be imposed after February 18, 1990, based on consideration of the probable costs to the Special Risk Insurance Fund of further commitments, measured by certain factors such as rate and amount of claims payments.

Section 203(q) of the National Housing Act authorizes mortgage insurance only under section 203(b) of the Act (as modified by section 203(q)). Therefore, §§ 203.43c (cooperative units) and 203.50 (rehabilitation loans) and Parts 213 (cooperative units), 220 (urban renewal), 221 (low costs and moderate income), 222 (servicemen), 226 (armed services housing for civilian employees), 227 (armed services housing for impacted areas), 235 (lower income homeownership), 237 (special mortgage insurance for low- and moderate-income families) and 240 (fee title purchase) are each amended to add the new § 203.43j to the list of Part 203 provisions which are inapplicable to such programs.

HUD has also determined that all mortgage insurance applications under this rule should be processed by HUD under the prior approval procedure rather than through the Direct Endorsement procedure. Section 200.163(a)(2) is amended to exclude section 203(q) from the list of Direct Endorsement programs. HUD also does not regard this program as appropriate for coinsurance and § 204.1 is amended to exclude this program from the coinsurance regulations. Section 203.45(g) has been amended to exclude graduated payment mortgages from this rule, since the negative amortization feature of such mortgages would increase the already greater-than-ordinary risk of mortgages insured under this rule.

The regulations which ordinarily govern the maximum amount for section 203(b) mortgages (§§ 203.18–203.18c) are also applicable to mortgages authorized by this rule. Because of the unusual title situation, however, HUD will issue special instructions regarding determination of value.

HUD has also amended Subparts B (Contract Rights and Obligations) and C

(Servicing Responsibilities) of Part 203 to include provisions applicable if a default occurs prior to either negotiated renewal of the lease on a long-term basis (at least five years beyond the mortgage term) or renewal on the basis of an arbitration award (i.e., while the current lease situation persists). After renewal the ordinary provisions would apply. In this context, HUD is permitting renewal lease terms shorter than the normal requirement of ten years beyond the mortgage term to balance the need for adequate mortgage security against the Seneca Nation's preference for shorter lease terms. The changes to Subparts B and C are similar to changes made as part of the recent rules for the Hawaiian home lands mortgage insurance program under Section 247 of the National Housing Act (52 FR 8064 and 28470), published on March 6 and July 30, 1987, and the Indian reservations mortgage insurance program under Section 248 of the Act (52 FR 21866), published on June 9, 1987, which provide for assignment of mortgages in default.

HUD believes that mortgages are unlikely to express sufficient interest in the program if they must make insurance claims on a "business as usual" basis during the uncertain situation concerning the eventual terms and conditions of the leases, with the real possibility of litigation and the possibility the leases will terminate. Section 203.350 is amended by adding a new paragraph (d), which provides that HUD will accept assignment of section 203(q) mortgages in the case of a 90-day default in payment, or in the case of any 30-day default if the leasehold estate has terminated before the mortgage has been assigned or title to the leasehold conveyed to HUD. In the case of any other default, assignment is at HUD's discretion.

A mortgage which is not receiving monthly payments should be able to take action to protect its interests within a definite period of time. It may not be possible for a mortgagee to expeditiously acquire through foreclosure any valuable interest, as long as the lease renewal is uncertain, and HUD considers it reasonable to give mortgages the option of direct assignment of the mortgage. The mortgage may also be in default because of a mortgagor's failure to take actions needed to renew the lease (see § 203.43j(b)). If the mortgagor continues to make monthly payments and the mortgagee takes actions toward renewal on behalf of the mortgagor (as the mortgage will permit), there may be no need for assignment. However, at some

point the lease renewal situation may become so complex, particularly in terms of litigation, that it would not be reasonable to expect an insured lender to voluntarily expend its time and efforts (even on a reimbursable basis) to remain involved in the situation. In such a case, HUD has reserved the option of accepting assignment.

In addition to the usual requirements for mortgages to report on delinquent mortgagors to HUD, HUD will require mortgagees to report on other defaults including mortgagor failure to take actions to renew the lease.

Because of the potential for rapid changes in the situation beyond control of the mortgagor, HUD does not regard the Temporary Mortgage Assistance Payments program (52 FR 6908), published on March 5, 1987, as appropriate for section 203(q) mortgages before the leases have been renewed, and therefore assignment will be permitted but no TMAP will be provided. Nevertheless, the changes to Subparts B and C of Part 203 are interrelated to changes which will be made by the TMAP rule and for this reason the effective date of these changes and changes to certain sections in other Parts will be delayed until the TMAP rule is effective.

A new 24 CFR 203.439a contains the special provisions for filing claims on defaulted section 203(q) mortgages. Paragraph (a) provides that the special provisions of this section are applicable to mortgages on leaseholds prior to renewal, and not to mortgages on leaseholds subsequent to renewal. If and when the lease is renewed, mortgagees will then treat defaulted mortgages on Allegany Reservation ground leases as any other mortgage in regard to the forbearance assignment process, TMAP and foreclosure. Paragraph (b) provides for payment of claims whenever an assignment is accepted under the new § 203.350(d). Paragraph (c) addresses title questions by providing exceptions to the usual requirements on title quality and title evidence. It also states that the new rule on claims without conveyance of title (§ 203.368) does not apply.

A new 24 CFR 203.666 is added. This section contains the provisions for forbearance assignment relief when a defaulted mortgage on a pre-renewal lease is assigned to the Secretary. Some distinctions are made between assignments for monetary and non-monetary defaults. In both cases the mortgagee must provide information relevant for consideration of forbearance when assignment is requested. HUD retains broad discretion to forbear, which it may exercise with reference to the current lease situation

as well as the individual mortgagor's situation. At a minimum, however, a mortgagor whose payment default was the grounds for assignment will receive the same consideration for forbearance as any other non-section 203(q) assignment case.

Technical amendments for filing claims and assigning defaulted mortgages on pre-renewal leaseholds have been made to §§ 203.355, 203.604(b), 203.640(a), 203.645(a) and 203.654.

Procedural Requirements

The Department is publishing this rule for effect as an interim rule that solicits public comment. With the current ground leases expiring in February 1991, we believe that time is of the essence if the special purposes of this rule are to be achieved, *i.e.*, providing for at least a limited home mortgage market in Salamanca, New York prior to renewal of the leases. We believe it to be in the public interest that the benefits provided in this rule be made available with an absolute minimum of procedural delay and that the Congress concurs in this assessment. The provisions authorizing this special mortgage insurance were extracted from omnibus housing legislation which had earlier passed the House of Representatives (when it became apparent that it was unlikely such legislation would be enacted in 1986), and passed as a separate law. In the current Congress, the House of Representatives has passed an amendment to Pub. L. 99-601 which would require, rather than simply authorize, the Secretary of HUD to insure these mortgages. We believe that both of these Congressional actions demonstrate a sense of urgency in the Congress that this program be quickly implemented.

This rule does not constitute a "major rule" as that term is defined in section (b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in cost 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 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 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 hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Under 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. The rule only provides for a limited number of mortgages on homes in Salamanca, N.Y., to be insured during a limited period of time. It should provide new economic opportunities equally to large and small entities by enabling them to obtain mortgage loans on a financially feasible basis for the first time in recent years.

Information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments relating to information collection requirements should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD. After OMB review and approval, the public will be notified of the OMB control number assigned these requirements through a technical amendment to this rule.

This rule was listed as item 983 in the Department's Semiannual Agenda of Regulations (published at 52 FR 40358, 40380) on October 26, 1987, under Executive Order 12291 and the Regulatory Flexibility Act.

The mortgage insurance program listed in the Catalog of Federal Domestic Assistance under the following number would be covered by this rule: 14.117.

List of Subjects in 24 CFR Parts 200, 203, 204, 213, 220, 221, 222, 226, 227, 235, 237, and 240

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, Home improvement, Solar energy, Cooperatives, Urban renewal, Rental housing, Projects, Condominiums, Low and moderate income housing.

Displaced families, Single family housing, Military personnel, Government employees, Federally affected areas: Defense housing, Homeownership, Grant programs: Housing and community development, Fee title purchase.

Accordingly, 24 CFR Parts 200, 203, 204, 213, 220, 221, 222, 226, 227, 235, 237 and 240 are amended as follows:

PART 200—INTRODUCTION

1. The authority citation for Part 200 continues to read as follows:

Authority: Titles I and II, 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)).

2. Section 200.163(a)(2) is revised to read as follows:

§ 200.163 Direct endorsement.

(a) * * *

(2) Single family mortgages insured under any of the programs listed in paragraph (a)(1) of this section pursuant to sections 223, 225, 238(c), 244, 247, or 248 of the National Housing Act, or under section 203(b) of the Act as modified by section 203(g), are not eligible for processing under this section. The provision contained in 24 CFR 221.55 which permits a builder-mortgagor to sell a property to a displaced family on a deferred basis is not available in the Direct Endorsement program.

* * *

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

3. The authority citation for Part 203 continues to read as follows:

Authority: Secs. 203, and 211, National Housing Act (12 U.S.C. 1709, 1710, 1715(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

4. Section 203.43c(a) is revised to read as follows:

§ 203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.

(a) The provisions of §§ 203.16a, 203.17, 203.18, 203.18a, 203.18b, 203.23, 203.24, 203.26, 203.37, 203.38, 203.43b, 203.43h, 203.43i, 203.43j, 203.44, 203.49 and 203.50 of this part do not apply to mortgages insured under section 203(n) of the National Housing Act.

* * *

5. Part 203 is amended by adding a new § 203.43j to read as follows:

§ 203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

A mortgage on a leasehold estate covering a one- to four-family residence located on the Allegany Reservation of the Seneca Nation of Indians in the State of New York is eligible for insurance if the mortgage meets the requirements of this subpart as modified by this section.

(a) *Title.* This section applies only to a mortgage which:

(1) Does not meet the requirements of § 203.37;

(2) Is on a leasehold under a lease with a termination date in February 1991, which provides for renewal in accordance with the Act of February 19, 1875 (18 Stat. 330) and the Act of September 30, 1890 (26 Stat. 558).

A mortgage may not be on a leasehold created by a lease which is executed after the effective date of this section as a renewal or replacement of a lease described in paragraph (a)(2) of this section. A mortgage may not be secured by any other right of occupancy created in lieu of a leasehold after the effective date of this section by agreement of the Seneca Nation, court order, law or any other means.

(b) *Provisions of mortgage.* The Secretary will prescribe special mortgage provisions in the form of a mortgage rider in order better to secure the mortgagee, including:

(1) Authorization for the mortgagee to exercise the option of lease renewal if the mortgagor fails to do so, and to recover from the mortgagor authorized expenses incurred to obtain lease renewal; and

(2) Making a mortgagor failure to take steps necessary for less renewal an event of default under the mortgage.

(c) *Secretary agreement with mortgagor.* The mortgagor must enter into an agreement with the Secretary and such other parties as the Secretary may require regarding actions to be taken to obtain either a renewal of the lease or a new lease.

(d) *Certification.* The borrower must certify that it has received disclosures, in a form prescribed by the Secretary, explaining the status of the lease and the consequences of nonrenewal. The disclosure shall include a discussion of the fact that a mortgagor who does not obtain a lease renewal and loses the right of occupancy will remain liable for the outstanding balance of the mortgage.

(e) *Purchase by owner-occupant.* The mortgagor must be a purchaser intending to occupy the property as a principal residence. Mortgages may not be used to refinance existing mortgages.

(f) *Relationship of income to housing expense.* For purposes of § 203.33(a), the total prospective housing expense shall include the Secretary's estimate of future lease payments during the term of the mortgage rather than lease payments in effect at the time of application.

(g) *Suspension of commitments.* The Secretary may suspend the issuance of commitments to insure mortgages under this section, for the entire period during which commitments could otherwise be issued for insurance under this section (i.e., through February 18, 1991) or for such lesser period as the Secretary may specify, by providing thirty days notice of suspension in the **Federal Register**. Regardless of its duration, a suspension to be imposed prior to February 19, 1990, will be based on a determination by the Secretary that, for mortgages insured during a specified period, the rate of monetary defaults (as measured by 90 day delinquencies) for mortgages insured under this section exceeds the rate of such monetary defaults for all insured mortgages on one- to four-family properties in the State of New York. A suspension to be imposed after February 18, 1990, will be based on a consideration by the Secretary of the probable costs to the Special Risk Insurance Fund of further commitments to insure under this section, as measured by such factors as the current and projected rate and amount of claims payments, together with other significant current and projected costs as determined by the Secretary, including a review of the actual and projected monetary default rate (as measured by 90 day delinquencies) and the actual and projected rate of lease renewal through negotiation and arbitration.

6. Section 203.45(g) is revised to read as follows:

§ 203.45 Eligibility of graduated payment mortgages.

(g) This section shall not apply to a mortgage that meets the requirements of §§ 203.18(c), (d), (e) or (f), 203.43, 203.43a, 203.43b, 203.43j, or 203.49.

* * *

7. Section 203.50(i) is revised to read as follows:

§ 203.50 Eligibility of rehabilitation loans.

(i) Rehabilitation loans which do not involve the insurance of advances, the refinancing of outstanding indebtedness or the purchase of the property need not be a first lien on the property but shall not be junior to any lien other than a first mortgage. The provisions of

§§ 203.15, 203.19, 203.23, 203.24, 203.26, and 203.43j shall not be applicable to such loans.

8. Section 203.350 is amended by redesignating the current paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 203.350 Assignment of defaulted mortgage.

(d) *Assignment of mortgages authorized by section 203(q), National Housing Act.* Notwithstanding the provisions of paragraph (a) of this section, the Secretary will, upon application by the mortgagee, agree to accept assignment of any mortgage authorized by section 203(q) of the National Housing Act (§ 203.43j of this part) if

(1) The mortgagor has been in default for more than 90 days for failure to make a monthly payment,

(2) The requirements of § 203.666 are satisfied, and

(3) The date of default occurs before the mortgagor and the lessor execute a lease renewal or a new lease with a term of not less than five years beyond the maturity date of the mortgage, or with a term established by an arbitration award.

If the default is non-monetary, the date of default occurs prior to an action described in paragraph (d)(3) of this section, the requirements of § 203.666 are satisfied, and the mortgagor has been in default for more than 30 days, the Secretary may in his or her discretion, upon application by the mortgagee, agree to accept an assignment of the mortgage. If the leasehold estate has terminated before the mortgage has been assigned, or title to the property conveyed, to the Secretary, and the mortgage is in default for any reason for more than 30 days, the Secretary will, upon application by the mortgagee, agree to accept an assignment of the mortgage.

9. The introductory text of § 203.355 is revised to read as follows:

§ 203.355 Acquisition of property.

With respect to defaulted mortgages on property located on Indian land insured pursuant to section 248 of the National Housing Act (§ 203.43h of this part), the mortgagee shall comply with §§ 203.350(b) and 203.664 of this part. With respect to defaulted mortgages on property located on Hawaiian home lands insured pursuant to section 247 of the National Housing Act (§ 203.43i of this part), the mortgagee shall comply with §§ 203.350(c) and 203.665 of this part. With respect to defaulted mortgages on property located on the

Allegany Reservation of the Seneca Nation of Indians authorized by section 203(q) of the National Housing Act (§ 203.43j of this part) the mortgagee shall comply with §§ 203.350(d) and 203.668 of this part, provided that the mortgagor and the lessor have not executed a lease renewal or a new lease either with a term of not less than five years beyond the maturity date of the mortgage, or with a term established by arbitration award. With respect to all other mortgages, including mortgages authorized by section 203(q) if the preceding sentence is inapplicable, the mortgagee shall take one of the following actions within one year from the date of default, or within any additional time as is approved by the Secretary or is authorized by §§ 203.345, 203.346, or § 203.650 through 203.658.

10. Part 203 is amended by adding a new undesignated center heading and a new § 203.439a, to read as follows:

Mortgages on Property in Allegany Reservation of Seneca Indians

§ 203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.

(a) *Applicability.* This section shall apply to mortgages authorized by section 203(q) of the National Housing Act (§ 203.43j of this part) only when the date of default occurs before the mortgagor and the lessor execute a lease renewal or a new lease either with a term of not less than five years beyond the maturity date of the mortgage, or with a term established by an arbitration award.

(b) *Claims.* In addition to other actions which the mortgagee may take pursuant to this subpart in order to receive insurance benefits, a mortgagee shall be entitled to receive such benefits when the Secretary has agreed to accept assignment of a mortgage in accordance with § 203.350(d) and the mortgagee has complied with §§ 203.351 and 203.353.

(c) *Exceptions.* Notwithstanding § 203.366, title to a leasehold estate conveyed to the Commissioner is not required to be marketable as to the term of the lease, provided that the mortgagee has taken any actions required by the Secretary to attempt to obtain a long-term renewal of the lease. Title evidence will be required in a form satisfactory to the Commissioner (see § 203.385) unless the Commissioner agrees to accept title to a leasehold estate without title evidence.

11. Paragraph (b) of § 203.604 is revised to read as follows:

§ 203.604 Contact with the mortgagor.

(a) * * *

(b) The mortgagee must have a face-to-face interview with the mortgagor, or make a reasonable effort to arrange such a meeting, before three full monthly installments due on the mortgage are unpaid. If default occurs in a repayment plan arranged other than during a personal interview, the mortgagee must have a face-to-face meeting with the mortgagor, or make a reasonable attempt to arrange such a meeting within 30 days after such default and at least 30 days before foreclosure is commenced, or at least 30 days before assignment is requested if the mortgage is insured on Hawaiian home land pursuant to section 247 or Indian land pursuant to section 248 or if assignment is requested under § 203.350(d) for mortgages authorized by section 203(q) of the National Housing Act.

12. Paragraph (a) introductory text, of 203.640 is revised to read as follows:

§ 203.640 Temporary mortgage assistance payments.

(a) The Secretary may make temporary mortgage assistance payments (TMAP) to the mortgagee on behalf of a mortgagor who owns the property, except for property subject to a mortgage insured pursuant to section 247 (see § 203.665) or section 248 of the National Housing Act (see § 203.664) or a mortgage authorized by section 203(q) of the National Housing Act (see § 203.666), when the following conditions are met:

13. Paragraph (a) of § 203.645 is revised to read as follows:

§ 203.645 Assignment of mortgage, with forbearance.

(a) For a mortgage other than one insured pursuant to section 247 or section 248 of the National Housing Act (§ 203.43i or § 203.43h of this part) or authorized by section 203(q) of the National Housing Act (§ 203.43j of this part), the Secretary will accept an assignment and provide forbearance if the conditions of § 203.640 (a)(1) through (a)(6) except (a)(4)(ii) are met, and the Secretary determines that assignment is necessary to avoid foreclosure and TMAP would be inappropriate in the case of the mortgagor. Among other grounds, TMAP will be determined to be inappropriate if the mortgagee refuses to accept TMAP (in violation of § 203.658(b)), or if extension of the mortgage maturity (by not more than 10 years after the original maturity) would be necessary in order for the mortgagor

to afford repayment, and the mortgagee is unwilling to extend the maturity date. TMAP will also be determined to be inappropriate if a mortgagor is unable to execute the documents required by the Secretary to assure repayment of a TMAP loan (§ 203.640(b)(7)), where the inability to execute the necessary documents is caused by circumstances beyond the mortgagor's control. For mortgages insured pursuant to section 247 of the National Housing Act, see §§ 203.350(c) and 203.665. For mortgages insured pursuant to section 248 of the National Housing Act, see §§ 203.350(b) and 203.664. For mortgages insured pursuant to section 203(q) of the National Housing Act, see §§ 203.350 (d) and 203.666.

14. Part 203 is amended by revising § 203.654 to read as follows:

§ 203.654 Final decision.

The Secretary will promptly advise the mortgagor and the mortgagee of the final decision in writing. If the Secretary determines to approve TMAP, or to accept an assignment of the mortgage and provide forbearance in accordance with § 203.645, or to provide forbearance in accordance with § 203.664, § 203.665 or § 203.666, the mortgagor will be asked to meet with the Secretary's representative to discuss the amount and term of the payments that the mortgagor will be required to make under the TMAP or forbearance agreement to be executed. If the Secretary determines not to approve TMAP, and neither to accept an assignment of the mortgage under § 203.645 nor to provide forbearance in accordance with § 203.664, § 203.665 or § 203.666, the Secretary will advise the mortgagor of the findings and the specific criteria not met by the mortgagor.

15. Part 203 is amended by adding a new undesignated center heading and a new § 203.666 to read as follows:

**Assignment and Forbearance—
Property in Allegany Reservation of
Seneca Indians**

§ 203.666 Processing defaulted mortgages on property in Allegany Reservation of Seneca Nation of Indians.

(a) *Applicability.* This section applies to mortgages authorized by section 203(q) of the National Housing Act (§ 203.43j) only if the default occurred before the mortgagor and the lessee execute a lease renewal or a new lease either with a term of not less than five years beyond the maturity date of the mortgage, or with a term established by an arbitration award.

(b) *Assignment (mandatory acceptance).* Before a mortgagee requests the Secretary to accept an assignment of a mortgage under the first sentence of § 203.350(d) where the mortgagor is in monetary default, the mortgagee must submit documents showing that the requirements of § 203.604 have been met and must provide all information in its possession concerning the mortgagor's eligibility for relief as set forth in § 203.664(b)(1)(i) through (v) and (b)(2) through (b)(4). Temporary mortgage assistance payments (TMAP) shall not be available.

(c) *Assignment (discretionary acceptance).* Before a mortgagee requests the Secretary to exercise his or her discretion to accept an assignment of a mortgage under the second sentence of § 203.350(d) where the mortgagor is in non-monetary default, the mortgagee must provide all information in its possession concerning the mortgagor's eligibility for relief as set forth in § 203.664(b)(1)(iii) through (v) and (b)(2) through (b)(4). TMAP shall not be available.

(d) *Forbearance.* The Secretary may make forbearance relief on any terms and conditions which he or she in his or her discretion deems appropriate, provided: that if assignment is requested for a monetary default, the Secretary will, at a minimum, provide forbearance relief in accordance with §§ 203.646 through 203.649.

PART 204—COINSURANCE

16. The authority citation for Part 204 continues to read as follows:

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

§ 204.1 [Amended]

17. Section 204.1 is amended by adding, to the list of excepted provisions, immediately after "203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.", the following:

203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

**PART 213—COOPERATIVE HOUSING
MORTGAGE INSURANCE**

18. The authority citation for Part 213 is revised to read as follows:

Authority: Secs. 211, 213, National Housing Act (12 U.S.C. 1715b, 1715e); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 213.751 [Amended]

19. Section 213.751(b) is amended by adding, immediately after "203.439 Mortgages insured on Hawaiian home lands pursuant to section 247 of the National Housing Act.", the following:

203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.

20. Section 213.800 is revised to read as follows:

§ 213.800 Cross reference.

All of the provisions of Subpart C, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act shall apply to mortgages insured under section 213 of the National Housing Act, except §§ 203.665 and 203.666.

**PART 220—URBAN RENEWAL
MORTGAGE INSURANCE AND
INSURED IMPROVEMENT LOANS**

21. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 207, 211, 220, National Housing Act (12 U.S.C. 1713, 1715b, 1715k); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 220.1 [Amended]

22. Section 220.1(a) is amended by adding to the list of excepted provisions, immediately after "203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.", the following:

203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

§ 220.251 [Amended]

23. Section 220.251(a) is amended by adding at the end of the list of excepted provisions, the following:

203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.

24. Section 220.900 is revised to read as follows:

§ 220.900 Cross-reference.

All of the provisions of Subpart C, Part 203 of the chapter concerning the responsibilities of servicers of mortgages insured under section 203 of the National Housing Act apply to mortgages covering 1- to 11-family dwellings insured under section 220 of the National Housing Act, except §§ 203.664 through 203.666.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

25. The authority citation for Part 221 continues to read as follows:

Authority: Secs. 211, 221, National Housing Act (12 U.S.C. 1715b, 1715l); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 221.1 [Amended]

26. Section 221.1(a) is amended by adding, to the list of excepted provisions, immediately after "§ 203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.", the following:

203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

§ 221.251 [Amended]

27. Section 221.251(a) is amended by adding, to the end of the list of excepted provisions, the following:

203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.

28. Section 221.800 is revised to read as follows:

§ 221.800 Cross-reference.

All of the provisions of Subpart C, Part 203 of the chapter concerning the responsibilities of servicers of mortgages insured under section 203 of the National Housing Act apply to mortgages covering one- to four-family dwellings to be insured under section 221 of the National Housing Act, except §§ 203.664 through 203.666.

PART 222—SERVICEMEN'S MORTGAGE INSURANCE

29. The authority citation for Part 222 continues to read as follows:

Authority: Secs. 211, 222, National Housing Act (12 U.S.C. 1715b, 1715m); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 222.1 [Amended]

30. Section 222.1(a) is amended by adding to the list of exempted provisions, immediately after "203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.", the following:

203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

§ 222.251 [Amended]

31. Section 222.251(a) is amended by adding to the list of excepted provisions, immediately after "203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.", the following:

203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.

32. Section 222.400 is revised to read as follows:

§ 222.400 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter concerning the responsibilities of servicers of mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 222 of the National Housing Act, except §§ 203.664 through 203.666.

PART 226—ARMED SERVICES HOUSING—CIVILIAN EMPLOYEES [SEC. 809]

33. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 211, 807, and 809, National Housing Act (12 U.S.C. 1715b, 1748f, 1748h-1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 226.1 [Amended]

34. Section 226.1(a) is amended by adding, to the list of excepted provisions, immediately after "203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.", the following:

203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

§ 226.251 [Amended]

35. Section 226.251(a) is amended by adding, immediately after "203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.", the following:

203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.

36. Section 226.300 is revised to read as follows:

§ 226.300 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter concerning the responsibilities of servicers of mortgages insured under section 203 of the National Housing Act apply to mortgages insured under section 809 of

the National Housing Act, except §§ 203.664 through 203.666.

PART 227—ARMED SERVICES HOUSING—IMPACTED AREAS [SEC. 810]

37. The authority citation for Part 227 continues to read as follows:

Authority: Secs. 211, 807, 810, National Housing Act (12 U.S.C. 1715b, 1748f, 1748h-z); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 227.501 [Amended]

38. Section 227.501(b) is amended by adding, in the list of excepted provisions, immediately after "203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.", the following:

203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

§ 227.751 [Amended]

39. Section 227.751(a) amended by adding, immediately after "203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.", the following:

203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.

40. Section 227.800 is revised to read as follows:

§ 227.800 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act shall apply to individual mortgages insured under section 810 of the National Housing Act, except §§ 203.664 through 203.666.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

41. The authority citation for Part 235 continues to read as follows:

Authority: Secs. 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 235.1 [Amended]

42. Section 235.1(a) is amended by adding to the list of excepted provisions, immediately after "203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.", the following:

203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

§ 235.201 [Amended]

43. Section 235.201(a) is amended by adding to the list of excepted provisions, immediately after "203.439 Mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.", the following:

203.439a Mortgages on property in Allegany Reservation of Seneca Nation of Indians authorized by section 203(q) of the National Housing Act.

PART 237—SPECIAL MORTGAGE INSURANCE FOR LOW AND MODERATE INCOME FAMILIES

44. The authority citation for Part 237 continues to read as follows:

Authority: Secs. 203, 211, 237, National Housing Act (12 U.S.C. 1709, 1715b, 1715z-2); sec. (d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

45. Section 237.5 is revised to read as follows:

§ 237.5 Cross-reference.

To be eligible for insurance under this subpart, a mortgage must meet all of the eligibility requirements for insurance under Part 203, Subpart A of this chapter; or under Part 220, Subpart A of this chapter; or under Part 221, Subpart A of this chapter; or under Part 234, Subpart A of this chapter, except that in addition to meeting such eligibility requirements, the mortgage must comply with the special requirements of this subpart. Mortgages and loans processed under the Direct Endorsement program set forth in § 200.163, mortgages insured on Hawaiian home lands or Indian land pursuant to section 247 or 248 of the National Housing Act or mortgages insured under section 203(b) of the Act as modified by section 203(q), are not eligible under this subpart.

PART 240—MORTGAGE INSURANCE ON LOANS FOR FEE TITLE PURCHASE

46. The authority citation for Part 240 continues to read as follows:

Authority: Secs. 211 and 240, National Housing Act (12 U.S.C. 1715b, 1715z-5); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 240.1 [Amended]

47. Section 240.1 is amended by adding to the list of excepted provisions, immediately after "203.43j Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.", the following:

203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

48. Section 240.400 is revised to read as follows:

§ 240.400 Cross-reference.

All of the provisions of Subpart C, Part 203 of this chapter covering mortgages insured under section 203 of the National Housing Act apply to loans for the purchase of the fee simple title of property which are insured under section 240 of the National Housing Act, except §§ 203.664 through 203.666.

Dated: November 17, 1987.

James E. Schoenberger,
General Deputy Assistant Secretary for
Housing—Federal Housing Commissioner.
[FR Doc. 87-29092, Filed 12-18-87; 8:45 am]
BILLING CODE 4210-27-M

24 CFR Part 888

[Docket No. N-87-1712; FR-2377]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program

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

ACTION: Notice of fair market rents.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents periodically, but not less frequently than annually. The Department published proposed Fair Market Rents for the Section 8 Existing Housing Program on August 28, 1987 (52 FR 32672) and solicited public comment. Today's document is the first of two announcements of effective FY-1988 Fair Market Rent schedules for the Section 8 Existing Housing Certificate Program (Part 882, Subparts A and B) including space rentals by owners of manufactured homes under the Section 8 Existing Housing Certificate Program (Part 882, Subpart F); the Section 8 Moderate Rehabilitation Program (Part 882, Subparts D and E); and Section 8 existing housing assisted under Part 886, Subparts A and C (Section 8 loan management and property disposition programs). In addition, FMRs are used to determine payment standard schedules in the Housing Voucher Program.

EFFECTIVE DATE: These Fair Market Rents are effective on December 21, 1987.

FOR FURTHER INFORMATION CONTACT: Cecelia D. Livingston, Housing Voucher Division, Office of Elderly and Assisted Housing, telephone (202) 755-6477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 755-5577. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes a housing assistance program to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents (FMRs) (or payment standards based on FMRs in the Housing Voucher Program) established by HUD for different areas.

In general, the FMR for an area is the amount that would be needed to rent privately owned, decent, safe, and sanitary rental housing of a modest (nonluxury) nature with suitable amenities.

Proposed Fair Market Rents

The Department proposed fiscal year 1988 FMRs for Section 8 existing housing on August 28, 1987 (52 FR 32672). These FMRs reflect estimated rent levels as of April 1, 1988. The criteria and methodology used by HUD in developing the proposed FMRs appear at 24 CFR Part 888, Subpart A and have been in use since 1983.

The elements used by HUD in developing FMRs are: (1) The 45th percentile rent (that is, the rent below which 45 percent of the standard quality rental housing units are distributed); (2) rents based on units occupied by recent movers (households who moved within two years before the date of the survey data used in these calculations); and (3) exclusion from the data base of public housing units and recently competed housing (units built within two years of the survey dates). (See 24 CFR 888.113). The FMRs for manufactured from spaces are based on the 45th percentile rent for manufactured home spaces. (See 24 CFR 888.113(a)).

In establishing the proposed FMRs, HUD used the most accurate data available. Data used to compute the FY-1988 FMRs include the 1980 Census data, post-1980 American Housing Survey (AHS) data and reliable area