

Proposed Rules

Federal Register

Vol. 68, No. 111

Tuesday, June 10, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3565

RIN 0575-AC28

Guaranteed Rural Rental Housing Program; Secondary Mortgage Market Participation

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS) proposes to amend its regulations for the Guaranteed Rural Rental Housing Program (GRRHP). Under the GRRHP, RHS guarantees loans for the development of housing and related facilities for low or moderate income families in rural areas. RHS administers the GRRHP under the authority of the Housing Act of 1949. The GRRHP regulations are being amended to allow RHS, in the case of a default, to buy back guaranteed loans from investors. Another change includes lowering the minimum level of rehabilitation work when guaranteed loans are used for acquisition and rehabilitation. These regulatory changes are made to increase participation by the secondary mortgage market in the GRRHP.

DATES: Written or E-mail comments must be received on or before August 11, 2003.

ADDRESSES: Written comments may be submitted, in duplicate, to Tracy Givlekian, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue SW., Washington, DC 20250-0742. Comments may be submitted via the Internet by addressing them to comments@rus.usda.gov and must contain the words "Secondary Mortgage" in the subject. All written comments will be available for public inspection at 300 7th Street SW., Washington, DC 20024, during normal working hours.

FOR FURTHER INFORMATION CONTACT:

Arlene Nunes, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0781, 1400 Independence Avenue SW., Washington, DC 20250-0781, Telephone (202) 720-1604.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant for purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by OMB under the provisions of 44 U.S.C. chapter 35 and this regulation has been assigned OMB control number 0575-0174, in accordance with the Paperwork Reduction Act of 1995. There will be a slight increase in the collection requirements from those approved by OMB. Those increased requirements will be addressed when the rule change is published as a final rule.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section

205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.438, Section 538 Rural Rental Housing Guaranteed Loans.

Intergovernmental Consultation

For the reasons contained in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940-J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has

determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Background

The Guaranteed Rural Rental Housing Program (GRRHP) is a relatively new program that is administered by the Rural Housing Service (RHS). The GRRHP was operated as a pilot program in 1996 and 1997, and has been a permanent program since 1998. The program has been designed to increase the availability of affordable multifamily housing in rural America through partnerships between the Agency and lending sources, as well as with state and local housing finance agencies and bond issuers. During the early stages of the program, barriers were identified that have limited the success of the program. One of the primary barriers has been the inability of lenders to close loans due to a lack of participation by the secondary mortgage market. As a result of this poor performance, we consulted industry and governmental experts in the loan guarantee field at a December 2000 stakeholders' meeting. Our main goal was to learn what we could do to close more loans. The regulatory changes herein are the result of meetings with industry stakeholders, including input from banks, housing finance agencies, and secondary market sectors. The meetings were held to identify program stumbling blocks and brainstorm solutions. The purpose of the following changes is to make the program more industry friendly while not jeopardizing the best interests of the Government.

Allow for a timely payment to investors. In other Rural Development guaranteed programs, the security holder may demand that either the lender or the Government buy out the guaranteed portion of the loan from the holder if payments are delinquent by at least 60 days, or if the lender has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of its receipt. While the holder is effectively taken out prior to liquidation of the loan, the lender must continue to meet all of its obligations to the Government under the Lender's Agreement and Loan Note Guarantee. This provision is important to investors because they do not want to wait for the lender to liquidate the collateral to be reimbursed for their investment, enabling them to put their money to

better use elsewhere. By this rule change, the Agency is also adding a definition of the term "Holder."

Define conditions of the guarantee. A common concern found among lenders reviewing the GRRHP were the policies on termination or reduction of the guarantee due to a performance failure of the lender. It was the consensus that these policies needed to be more clearly delineated. In addition, it is important for the regulation to make clear that the investor will be held harmless unless they are complicit with the lender in cases involving fraud, abuse, negligence or misrepresentation of fact. This issue has been addressed in the revision of § 3565.52.

Allow the accrual of interest for 90 days after loan default. When the lender is liquidating a guaranteed loan and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate. Upon payment under the current policy, interest accrual terminates on the defaulted loan if an estimated payment of loss is made. This revision changes this policy to allow interest to accrue for 90 days after the date the decision is made to liquidate the loan in default. This interest accrual policy is consistent with other Agency loan guarantee programs. Based on the weight of the factors used to calculate the program's subsidy rate, the impact of this interest accrual policy would be negligible.

Lower per unit threshold for acquisition with rehabilitation from \$15,000 per unit to \$6,500 per unit. The purpose of lowering the per unit rehabilitation threshold affords new opportunities to preserve affordable housing in a rural community.

Eliminate the timeframe for liquidation, which is currently at 9 months. Eliminating the liquidation timeframe affords the lender the opportunity to sell the property for the highest and best price in accordance with market conditions.

List of Subjects in 7 CFR Part 3565

Banks, Conflict of interests, Credit, Environmental impact statements, Fair housing, Hearing and appeal procedures, Low and moderate income housing, Mortgages, Real property acquisition.

Therefore, chapter XXXV, title 7, Code of Federal Regulations is proposed to be amended to read as follows:

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

1. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—General Provisions

2. Section 3565.3 is amended by adding, in alphabetical order, a definition of "Holder."

§ 3565.3 Definitions.

* * * * *

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through use of an assignment guarantee agreement form approved by the Agency.

* * * * *

Subpart B—Guarantee Requirements

3. Section 3565.52 is revised to read as follows:

§ 3565.52 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender's Agreement. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee.

(a) *Rights and liabilities.* A Guarantee under this part is backed by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender had knowledge at the time the lender acquired the Guarantee, or which a lender participates in or condones. The Guarantee will be unenforceable by the lender to the extent any loss is occasioned by fraud, misrepresentation or abuse, violation of usury laws, negligent servicing or origination by the lender, including a failure to acquire required security, or as a result of a use of proceeds by the lender for purposes other than those authorized by the Agency and permissible under this regulation. Negligent servicing or origination is a failure to perform those services, which a reasonably prudent lender would perform in servicing or originating its own portfolio, and includes not only the failure to act, but also the failure to act in a timely manner. These acts constitute grounds for the cancellation of the guarantee or refusal to make full payment under the guarantee. If in the judgment of the Agency these acts or omissions can reasonably be expected to have a material adverse effect on the credit

quality of the Guaranteed Loan or the physical condition of the property securing the Guaranteed Loan, the Agency may cancel or modify a guarantee to the extent of the potential loss. The Agency shall give notice to the lender of the acts or omissions that it considers to constitute such grounds and give the lender a reasonable opportunity to cure the acts or omissions. Other violations or performance deficiencies of the lender may themselves be a basis to bar the lender from receiving further Loan Note Guarantees, but will not constitute grounds for cancellation or reduction of the guarantee or refusal to make a claim payment. When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations.

(b) *Liability of the holder.* The holder shall not be liable for the actions of the lender including negligence, fraud, abuse, misrepresentation or misuse of funds, and its rights under the guarantee shall be fully enforceable notwithstanding the actions of the lender, unless the holder has knowledge of such actions when it becomes the holder or condones or participates in such actions.

(c) *Guarantee percentage and payment.* Both permanent loans and combination construction and permanent loans are eligible for a guaranty subject to the following limitations:

(1) *Permanent loans.* A minimum level of acceptable occupancy as determined by the lender with Agency concurrence must be attained prior to the expiration of Form 3565-2 Conditional Commitment, including any extensions thereto, and the issuance of a loan guarantee for the permanent loan. The maximum guarantee for a permanent loan will be 90 percent of the unpaid principal and accrued interest 90 days from the date the decision is made to liquidate the loan. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. The Agency liability under any guarantee will decrease or increase, in proportion to any increase or decrease in the amount of the unpaid portion of the loan, up to the maximum amount specified in the Loan Note Guarantee.

(2) *Combination construction and permanent loans.* For combination construction and permanent loans, the Agency will guarantee advances during

the construction loan period (which cannot exceed 24 months). The guarantee of construction loan advances will convert to a permanent loan guarantee once the required level of occupancy has been reached. The maximum guarantee of construction advances related to a combination construction and permanent loan will not at any time exceed the lesser of 90 percent of the amount of principal advanced for eligible construction expenses or 90 percent of the original principal amount of the combination loan. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. In addition, the lender shall require the borrower or the contractor to provide credit enhancements to protect the Government's guarantee. Acceptable credit enhancements include:

(i) Surety bonding or performance and payment bonding (the preferred credit enhancement);

(ii) An irrevocable letter of credit acceptable to the Agency; and

(iii) A pledge by the lender of acceptable collateral.

(3) *Maximum loss payment.* The maximum loss payment to a lender or holder is as follows:

(i) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.

(ii) To the lender, the lesser of:

(A) Any loss sustained by the lender on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(B) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon.

Subpart C—Lender Requirements

4. Section 3565.102 is amended by revising paragraph (b) to read as follows:

§ 3565.102 Lender eligibility.

* * * * *

(b) Meet the qualifications and be approved by Fannie Mae or Freddie Mac to make multifamily housing loans that are to be sold to or securitized by such corporations;

* * * * *

Subpart E—Loan Requirements

5. Section 3565.212 is amended by removing the word “; and” from paragraph (c) and adding a period and by removing paragraph (d).

Subpart F—Property Requirements

6. Section 3565.252 is revised to read as follows:

§ 3565.252 Housing types.

The property may include new construction or rehabilitated existing structures. The units may be attached, detached, semi-detached, row houses, modular or manufactured houses, or multifamily structures. Manufactured housing must meet Agency requirements contained in 7 CFR part 1924, subpart A or a successor regulation. The Agency will guarantee proposals for new construction or acquisition with moderate or substantial rehabilitation of at least 15 percent of the total estimated replacement cost of the project or \$6,500 per dwelling unit, whichever is greater. The portion of guarantee funds available for projects involving acquisition and rehabilitation may be limited in the annual Notice of Fund Availability.

Subpart I—Servicing Requirements

7. Section 3565.403 is amended by redesignating paragraphs (a), (b), (c), and (d) as paragraphs (b), (c), (d), and (e), respectively, and by adding a new paragraph (a) to read as follows:

§ 3565.403 Special servicing.

* * * * *

(a) *Repurchase from holder.* For securitized loans, the holder may require the lender or Government to repurchase the security in accordance with the provisions of § 3565.405.

* * * * *

8. Section 3565.405 is added to read as follows:

§ 3565.405 Repurchase of guaranteed loans.

(a) *Repurchase by lender.* A lender has the option to repurchase the unpaid guaranteed portion of the loan from a holder within 30 days of written demand by the holder when the borrower is in default not less than 60 days on principal or interest due on the loan; or the lender has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of the lenders receipt thereof. The repurchase by the lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The holder must concurrently send a copy of the demand letter to the Agency. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter to the lender requesting the repurchase.

The lender will accept an assignment without recourse from the holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve the problem, and prevent default, where and when reasonable. The lender will notify the holder and the Agency of its decision.

(b) *Repurchase by Agency.*

(1) If the lender does not repurchase the unpaid guaranteed portion of the loan as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 days after written demand to the Agency from the holder. This demand notice is in addition to the copy of the written demand on the lender. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the original demand letter of the holder to the lender requesting the repurchase.

(2) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder must also include evidence of its right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the assignment guarantee agreement, on a form approved by the Agency, properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The holder must include in its demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the holder.

(3) The Agency will notify the lender of its receipt of the holder's demand for payment. The lender must promptly provide the Agency with the information necessary for the Agency to determine the appropriate amount due the holder. Upon request by the Agency, the lender will furnish a current statement certified by an appropriate authorized officer of the lender of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. Such conflict will suspend the running of the 30 day payment requirement.

(4) Purchase by the Agency neither changes, alters, nor modifies any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the guarantee.

Subpart J—Assignment, Conveyance, and Claims

9. Section 3565.452 is amended by revising paragraph (a) to read as follows:

§ 3565.452 Decision to liquidate.

(a) A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 3565.403 or it has been determined that it is in the best interest of the Agency and the lender to liquidate. If the loan has not already been repurchased when a decision to liquidate is made, provisions will be made for repurchase in accordance with § 3565.405.

* * * * *

10. Section 3565.453 is revised to read as follows:

§ 3565.453 Disposition of the property.

(a) Submission of the liquidation plan. The lender will, within 30 days after a decision to liquidate, submit to the Agency in writing, its proposed detailed plan of liquidation. The Agency will inform the lender in writing whether the Agency concurs in the lender's liquidation plan. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation. The liquidation plan submitted to the Agency by the lender shall include:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments.

(2) A copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(3) A full and complete list of all collateral including any personal and corporate guarantees.

(4) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended actions for:

(i) Obtaining an appraisal of the collateral;

(ii) Acquiring and disposing of all collateral;

(iii) Collecting from guarantors;

(iv) Setting the proposed date of foreclosure; and

(v) Setting the proposed date of liquidation.

(5) Necessary steps for protection of the tenants and preservation of the collateral.

(6) Copies of the borrower's latest available financial statements.

(7) Copies of the guarantor's latest available financial statements.

(8) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(9) A schedule to periodically report to the Agency on the progress of liquidation.

(10) Estimated protective advance amounts with justification.

(11) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.

(12) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(13) Any legal opinions supporting the decision to liquidate.

(14) If the outstanding balance of principal and accrued interest is less than \$200,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and accrued interest is \$200,000 or more, the lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the fair market value and potential liquidation value, and an examination of the title on the collateral. In order to formulate a liquidation plan which maximizes recovery, collateral must be evaluated for hazardous substances, petroleum products, or other environmental hazards which may adversely impact the market value of the collateral.

(b) A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(c) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and

reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of weatherization, and prior liens.

(d) Filing an estimated loss claim. When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 days. The estimated loss payment will be based on the outstanding loan amount minus the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the loss claim will be promptly processed in accordance with applicable Agency regulations, as set forth in this section.

(e) Property disposition. Once the liquidation plan has Agency approval, the lender must make every effort to liquidate the property in a manner that will yield the highest market value consistent with the protections afforded to tenants in 7 CFR part 1944, subpart L or successor regulation.

(f) Accounting and reports. When the lender conducts liquidation, the lender will account for funds during the period of liquidation and provide the Agency with reports at least quarterly on the progress of liquidation, including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

(g) Transmitting payments and proceeds to the Agency. When the Agency is the holder of a portion of the guaranteed loan, the lender will transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or other proceeds.

11. Section 3565.457 is revised to read as follows:

§ 3565.457 Determination of claim amount.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed. The Agency will have the right to recover losses paid under the guarantee from any party which may be liable.

(a) *Report of loss form.* An Agency approved form will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved by the Agency after the Agency has approved a liquidation plan.

(b) *Estimated loss.* An estimated loss claim based on liquidation appraisal

value will be prepared and submitted by the lender.

(1) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the loan debt. Such application does not release the borrower from liability.

(2) A protective advance claim will be paid only at the time of the final report of loss payment except in certain transfer and assumption situations.

(c) *Final loss.* Within 30 days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees as provided for in this section, is completed, a final report of loss must be prepared and submitted by the lender to the Agency. The Agency will not guarantee interest beyond this 30-day period other than for the period of time it takes the Agency to process the loss claim. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender will make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts shown on the report of loss form.

(1) A determination must be made regarding the collectibility of unsecured personal and corporate guarantees. If reasonably possible, such guarantees should be promptly collected or otherwise disposed of prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender will show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. Liquidation expenses are recoverable only from collateral proceeds.

(5) Accrued interest will be supported by documentation as to how the amount was accrued.

(6) Loss payments will be paid by the Agency within 60 days after the receipt of the final loss report and accounting of the collateral.

(7) Should there be a circumstance where the lender cannot or will not sign a final report of loss, the State Director may complete the final report of loss and submit it to the Finance Office without the lender's signature. Before this action can be taken, all collateral must be disposed of or accounted for; there must be no evidence of fraud, misrepresentation, or negligent servicing by the lender; and all efforts to obtain the cooperation of the lender must have been exhausted and documented.

(d) *Maximum guarantee payment.* The maximum guarantee payment will not exceed the amount of guarantee percentage as contained in the guarantee agreement (but in no event more than 90%) times the allowable loss amount.

(e) *Rent.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt after paying operating expenses of the property.

(f) *Liquidation costs.* Liquidation costs will be deducted from the proceeds of the disposition of primary collateral. If changed circumstances after submission of the liquidation plan require a substantial revision of liquidation costs, the lender will procure the Agency's written concurrence prior to proceeding with the proposed changes.

(g) *Payment.* When the Agency finds the final report of loss to be proper in all respects, it will approve the form and proceed as follows:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment.

(3) If the Agency determines that it is in the Government's best interest to take assignment of the loan and conduct liquidation, as stipulated in the 538 statute 42 U.S.C. 1490, i(3) Assignment by Secretary, the Agency will pay the

lender in accordance with the Loan Note Guarantee.

(h) *Date of loss.* The date of loss is the date on which the collateral will be liquidated in the liquidation plan, unless an alternative date is approved by the Agency. Where the Agency chooses to accept an assignment of the loan or conveyance of title, the date of loss will be the date on which the Agency accepts assignment of the loan or conveyance of title.

(i) *Allowable claim amount.* The allowable claim amount must be calculated by:

(1) Adding to the unpaid principal and interest on the date of loss, an amount approved by the Agency for payments made by the lender for amounts due and owing on the property, including:

- (i) Property taxes and other protective advances as approved by the Agency;
- (ii) Water and sewer charges and other special assessments that are liens prior to the guaranteed loan;
- (iii) Insurance of the property; and
- (iv) Reasonable liquidation expenses.

(2) And by deducting the following items:

- (i) Any amount received by the lender on the account of the guaranteed loan after the date of default;
- (ii) Any net income received by the lender from the secured property after the date of default; and
- (iii) Any cash items retained by the lender, except any amount representing a balance of the guaranteed loan not advanced to the borrower. Any loan amount not advanced will be applied by the lender to reduce the outstanding principal on the loan.

(j) *Lender certification.* The lender must certify that all possibilities of collection have been exhausted and that all of the items specified in paragraph (c) of this section have been identified and reported to the Agency as a condition for payment of claim.

Dated: March 18, 2003.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. 03-14480 Filed 6-9-03; 8:45 am]

BILLING CODE 3410-XV-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-NM-164-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F (KC-10A and KDC-10), -40, and -40F Airplanes; and Model MD-10-10F and -30F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F (KC-10A and KDC-10), -40, and -40F airplanes; and certain Model MD-10-10F and -30F airplanes. This proposal would require inspections for cracking and corrosion of the bolt assemblies and bushings on the hinge fittings of the inboard and outboard flaps of the left and right wings, and follow-on and corrective actions. This action is necessary to prevent failure of the bolt and bushing that attach the hinge fitting to the flap, which could result in loss of the flap and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 25, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2002-NM-164-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2002-NM-164-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood

Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5224; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM-164-AD." The postcard will be date stamped and returned to the commenter.