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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

[DA–94–13]

Milk in the Eastern Colorado Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends certain performance standards of the Eastern Colorado Federal milk marketing order. The action was proposed by Mid-America Dairymen, Inc., a cooperative association that supplies milk for the market's fluid needs. The suspension will make it easier for handlers to qualify milk for pool status and prevent uneconomic milk movements that otherwise would be required to maintain pool status for milk of producers who have been historically associated with the market.

EFFECTIVE DATE: The suspension to § 1137.7 is effective from September 1, 1994 through February 28, 1995. The suspensions to § 1137.12 is effective from September 1, 1994 through August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 23, 1994; published June 29, 1994 (59 FR 33455).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers who have been historically associated with this market will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on June 29, 1994 (59 FR 33455) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting the proposed action was filed. No opposing views were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. For the months of September 1994 through February 1995: In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and "of March through August"; and

2. For the months of September 1994 through August 1995:

In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence, the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of", and the word "distributing".

Statement of Consideration

This action suspends certain portions of the "pool plant" and "producer" definitions of the Eastern Colorado order (Order 137). The suspension will make it easier for handlers to qualify milk for pooling under the order.

The suspension action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that has pooled milk of dairy farmers under Order 137 for several years. Mid-Am requested the suspension to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers who have been historically associated with the order.

For the months of September 1994 through February 1995, the restriction on the months when automatic pool plant status applies for supply plants will be removed. For the months of September 1994 through August 1995, the touch-base requirement will not apply and the diversion allowance for cooperatives will be raised.

These provisions have been suspended in prior years to maintain the pool status of producers who have historically supplied the fluid needs of Order 137 distributing plants. The marketing conditions which justified the prior suspensions continue to exist.

Mid-Am asserts that they have made a commitment to supply the fluid milk requirements of distributing plants if their suspension request is granted. Without the suspension, to qualify certain of its milk for pooling it would be necessary for the cooperative to ship milk from distant farms to Denver-area bottling plants. The distant milk would displace milk produced on nearby farms that would then have to be shipped from the Denver area to manufacturing plants located in outlying areas.

There are ample supplies of locally-produced milk that can be delivered directly from farms to distributing plants to meet the market's fluid needs without requiring shipments from supply plants. Also, neither the elimination of the touch-base requirement for producers nor the increase in the amount of milk that may be diverted to nonpool plants by a cooperative should jeopardize the needs of the market's fluid processors.

This suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to ensure that producers whose milk has long been associated with the Eastern Colorado marketing area will continue to benefit from pooling and pricing under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment supporting the suspension was filed. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1137

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, Part 1137, are amended as follows:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1137.7 [Suspended in part]

2. In § 1137.7(b), the second sentence is amended by suspending the words "plant which has qualified as a" and "of March through August" from September 1, 1994 through February 28, 1995.

§ 1137.12 [Suspended in part]

3. In § 1137.12(a)(1), the first sentence is amended by suspending the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant" from September 1, 1994 through August 31, 1995.

4. In § 1137.12(a)(1), the second sentence is amended by suspending the words "30 percent in the months of March, April, May, June, July and December and 20 percent in other months of", and the word "distributing" are suspended from September 1, 1994 through August 31, 1995.

Dated: August 29, 1994.

Patricia Jensen,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–21881 Filed 9–6–94; 8:45 am]

BILLING CODE 3410–02–P

Farmers Home Administration

7 CFR Part 1956

RIN 0575–AB26

Debt Settlement—Community and Business Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its policies and procedures governing debt settlement of Community Programs loans. These changes are necessary to comply with Section 2384, Title XXIII, of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624). This law is to establish and implement a program that is similar to the program established under Section 353 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2001), except that the debt restructuring and loan servicing procedures shall apply to delinquent Community Facility hospital or health care program loans rather than Farmer Program loans. The intended effect is to keep these facilities in operation with manageable debt.

EFFECTIVE DATE: September 7, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Barton, Loan Specialist, Community Facilities Division, Farmers Home Administration, Room 6314, South Agriculture Building, Washington, D.C. 20250, telephone: (202) 720–1504.

SUPPLEMENTARY INFORMATION

Classification

This rule has been determined to be significant/economically significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined 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.

Executive Order 12778

This regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that E.O. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B, must be exhausted prior to filing suit.

Intergovernmental Review

This action affects the following FmHA program as listed in the Catalog of Federal Domestic Assistance: No. 10.766 Community Facility Loans. This program is subject to the provisions of E.O. 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V; 48 FR 29112, June 24, 1983, 49 FR 2267, May 31, 1984, 50 FR 14088, April 10, 1985.)

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575–0124 in accordance with the Paperwork Reduction Act of 1980. This final rule does not revise or impose any new information collection requirements from those approved by OMB.

Background Information

Section 2384 of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, amended the Consolidated Farm and Rural Development Act and requires the Secretary of Agriculture to develop a debt restructuring and loan servicing program for FmHA hospital or health care facility borrowers. This program is similar to the loan restructuring and servicing program in effect for delinquent Farmer Program loans. This rule amends current FmHA regulations to implement this program. The program is intended to facilitate the continued operation of rural hospitals and health care facilities by implementing all possible debt restructuring options available that will result in an economically viable facility.

Given the congressional intent to provide rural hospitals and health care facilities a debt restructuring option similar to that provided Farmer Program borrowers, this regulation is modeled in a general sense on the Farmer Program restructuring scheme. Under this regulation, a hospital or health care debtor who is delinquent on its FmHA loan, and is unable to cure its delinquency through more traditional servicing methods, will be notified of the options available for debt restructuring. The debtor can apply for consideration by providing financial and operational information and proposing its own plan for curing the delinquency.

In order to be eligible for consideration for debt restructuring, the debtor's delinquency must have been caused by factors outside the debtor's control. In addition, the debtor must have acted in good faith with regard to the FmHA loan. FmHA will make these determinations based on the debtor's representation and the Agency's review of other documents relevant to these preliminary matters.

Once the debtor provides the financial and operational information required, FmHA will conduct a thorough analysis of the debtor's operations. This analysis will typically include contracting for an independent appraisal of the collateral securing the loan and contracting with an independent expert to prepare an "operations review." This review will provide FmHA with information regarding the facility's operations, its financial standing, and suggest alternatives that could be implemented to address the delinquency.

Using the information obtained from these sources and in consultation with the debtors and the experts, FmHA will calculate two values as required by the statute. First, FmHA will determine the loan's "net recovery" value. This value represents the current value of the loan if FmHA were to foreclose. Generally, the value is calculated by adding the value of assets securing the loan and subtracting the costs that would be incurred if the loan was foreclosed. Second, FmHA will determine the value of the restructured loan. This value is determined after a proposed plan is developed for the operation of the facility. That is, the operation and/or debt is modified to determine if the debtor can attain a positive cash flow and pay an adjusted debt service payment plus fund the FmHA Reserve Account.

After the restructured loan value and the net recovery value are calculated, FmHA can determine whether the debtor's request for debt restructuring can be approved. As required by the statute, FmHA can approve debt restructuring only if the value of the restructured loan is greater than, or equal to, the net recovery value. Once the Agency reaches this conclusion, the debtor will be notified of the results and given its options. If possible, the debt will be restructured and the facility will continue operations. If the net recovery value is greater than the value of the restructured loan, the debtor may choose to pay off the loan at the reduced net recovery value. If this option is not chosen, the loan likely will be accelerated.

Finally, if the debtor's debt is restructured or if the debtor elects to pay off the debt at the net recovery value, then the debtor will be required to execute an Appreciation Recapture Agreement. As explained in the statute, these Agreements allow the Agency to recoup a part or all of the debt that is written down if the debtor's underlying collateral appreciates in value over time and if the debtor sells the collateral within 10 years.

Discussion of Comments

On January 13, 1993, a proposed rule was published in the **Federal Register** (58 FR 4095) providing for a 30-day review and comment period ending February 12, 1993. Six comments were received.

Several respondents stated that the $300,000 limit on the writedown would not be enough to help many debtors and recommended that the rule be amended to remove the writedown limit. The rule is amended to remove the $300,000 limit. The writedown will be limited to the minimum amount necessary to meet the level of the facility's ability to service the debt.

One respondent recommended that the interest rate available under the Rural Rental Housing program, Section 8, which permits loans at rates as low as 1 percent, be extended to include health care facilities located in designated health professional shortage areas. Since FmHA's program regulations do not permit a reduction of interest rates below the poverty line interest rate, FmHA will not reduce the interest rate further.

Since publication of the proposed rule, the poverty line interest rate for FmHA and RDA loans changed from 5.0 percent to 4.5 percent. The final rule was changed to reference FmHA Instruction 440.1, Exhibit B, Interest Rates, for FmHA and RDA loans instead of using 5.0 percent.

The loan servicing options available through this action will result in debt restructuring packages which will provide significant benefit to all rural areas.

One respondent recommended that the definition of net recovery value be expanded to consider the potential net loss to the community if the facility were sold.

The definition of net recovery value presently emphasizes that the value of the assets should be calculated based upon the facility continuing to operate as a going concern, not merely as an empty building but as a facility continuing to offer health care services to the community it serves. This value can be based on the facility offering health care services which may, or may not, be similar to those offered by the current operators. This is the most practical and accurate method of determining the net recovery value of the facility.

One respondent recommended that we add the availability of writedown to servicing regulations without a mandate for a strict servicing regimen to be initiated as soon as a debtor reaches the delinquency time limitations. This respondent stated that a hospital could be offered net recovery buy out and not have the ability to obtain the buy out financing, at which point the Government would be forced to accelerate the loan.

FmHA is concerned about maintaining health care in rural areas. There is language in the rule which allows the Agency discretion in such cases. The program is intended to facilitate the continued operation of rural hospitals and health care facilities.

One respondent recommended a waiver of the $300,000 writedown limit when dealing with facilities in designated health professional shortage areas, those which are Medicare

waivered acute-care facilities, alternate rural health care delivery models, or facilities associated with related programs that may be approved by appropriate State licensing agencies.

As stated above, the $300,000 writedown limit has been removed.

Therefore, the final rule is changed from the proposed rule published in the **Federal Register** on January 13, 1993, as follows: *Debt writedown.* A one-time reduction of the debt owed to FmHA including principal and interest. This reduction will be the minimum amount necessary to meet the level of the facility's ability to service the debt.

List of Subjects in 7 CFR Part 1956

Accounting, Loan programs—Agricultural, Rural areas.

Accordingly, Chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1956—DEBT SETTLEMENT

1. The authority citation for part 1956 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23 and 2.70.

Subpart C—Debt Settlement—Community and Business Programs

2. Section 1956.102 is amended by redesignating the existing text as paragraph (a), adding a heading to newly designated paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 1956.102 Application of policies.

(a) General. * * *

(b) *For hospitals and health care facilities only.* Loan servicing and debt restructuring options according to § 1956.143 of this subpart must be exhausted before the other settlement authorities of this subpart are applicable.

3. Section 1956.143 is added to read as follows:

§ 1956.143 Debt restructuring—hospitals and health care facilities.

This section pertains exclusively to delinquent Community Facility hospital and health care facility loans. Those facilities which are nonprogram (NP) loans as defined in § 1951.203 (f) of subpart E of part 1951 of this chapter are excluded. The purpose of debt restructuring is to keep the hospital or health care facility in operation with manageable debt.

(a) *Definitions.* As used in this section, the following definitions apply:

Consolidation. The combining of two or more debt instruments into one instrument, normally accompanied by reamortization.

Debt writedown. A one-time reduction of the debt owed to FmHA including principal and interest. This reduction will be the minimum amount necessary to meet the level of the facility's ability to service the debt. The writedown will be applied first to interest and then principal.

Delinquency due to circumstances beyond the control of the debtor. Includes situations such as: The debtor has less money than planned due to unexpected and uncontrollable events such as unexpected loss of service area population, unforeseeable costs incurred for compliance with State or Federal regulatory requirements, or the loss of key personnel.

Delinquent debtor. For purposes of this section, delinquency is defined as being 180 days behind schedule on the FmHA payments. That is, one full annual installment or the equivalent for monthly, quarterly, or semiannual installments.

Eligibility. Applicants must be delinquent due to circumstances beyond their control and have acted in good faith by trying to fulfill the agreements with FmHA in connection with the delinquent loans.

Interest rate reduction. Reduction of the interest rate on the restructured loan to as low as the poverty line interest rate in effect on community and business programs loans.

Loan deferral. The temporary delay of principal and interest payments for up to 6 months. The debtor must be able to demonstrate the ability to pay the debt, as restructured, at the end of this delay period.

Net recovery value. A calculation of the net value of the collateral and other assets held by the debtor. This value would be determined by adding the fair market value of FmHA's interest in any real property pledged as collateral for the loan, plus the value of any other assets pledged or otherwise available for the repayment of the debt, minus the anticipated administrative and legal expenses that would be incurred in connection with the liquidation of the loan. This value of the assets should be calculated based upon the facility continuing to operate as a going concern. Therefore, the facility should be valued not merely as an empty building but as a facility continuing to offer health care services which may, or may not, be similar to those offered by the current operators.

Operations review. A study of management and business operations of the facility by an independent expert. For example, a study of a hospital and nursing home would include such areas as: general and administrative, dietary, housekeeping, laundry, nursing, physical plant, social services, income potential, Federal, State, and insurance payments, and rate analysis. Also, recommendations and conclusions are to be included in the study which would indicate the creditworthiness of the facility and its ability to continue as a going concern. In analyzing a debtor's proposed restructuring plan, FmHA may contract for the completion of an operations review. These reviews will be developed by individuals and entities who have demonstrated an expertise in the analysis of health care facilities from an operational and administrative standpoint. FmHA will consider the following criteria for selection: past experience in health care facility analysis, a familiarity with the problems of rural health care facilities, a knowledge of the particular area currently served by the facility in question, and a willingness to work with both FmHA and the debtor in developing a final plan for restructuring.

Restructured loan. A revision of the debt instruments including any combination of the following: writing down of accumulated interest charges and principal, deferral, consolidation, and adjustment of the interest rates and terms, usually followed by reamortization.

(b) *Debtor notification.* All servicing actions permitted under subpart E of part 1951 of this chapter are to be exhausted prior to consideration for debt restructuring under this section. To this end, the servicing official must ensure that the casefile clearly documents that all servicing actions under subpart E of part 1951 of this chapter have been exhausted and that the debtor is at least 1 full year's debt service behind schedule for a minimum of 180 days. The debtor then should be informed of the debt restructuring available under this section by using language similar to that provided in Guide 1 of this subpart (available in any FmHA Office) as follows:

(1) Any introductory paragraph;

(2) A paragraph concerning prior servicing attempts;

(3) A discussion of eligibility, as defined in this section, including the provision that the debtor acted in good faith in connection with their FmHA loan and that the delinquency was caused by circumstances beyond their control;

(4) Two paragraphs that explain the goal of the debt restructuring program;

(5) A paragraph stating that debt restructuring may include a

combination of servicing actions listed in paragraph (a) of this section;

(6) Information that details what the debtor must do to apply for restructuring. A response must be received within 45 days of receipt of this letter to request consideration for debt restructuring and the request must include projected balance sheets, budgets, and cash-flow statements which include and clearly identify funding of the FmHA reserve account for the next 3 years;

(7) A discussion of FmHA's analysis and calculation process; and

(8) A paragraph identifying the FmHA official who may be contacted for assistance.

(c) *State Director's restructuring determination.* Upon receipt of the delinquent debtor's request for debt restructuring consideration, the State Director will:

(1) Within 15 days of receipt of debtor's request, if an operations review is deemed necessary, send a memorandum to the Administrator asking for program authority to contract for the review in accordance with Exhibit D of FmHA Instruction 2024–A (available in any FmHA Office). The name of the debtor involved and the projected amount of funds anticipated to be spent for the contract should also be provided. It is anticipated that an operations review will be necessary in most cases and that the only exceptions would be for smaller health care facilities or facilities that have developed a proposed plan that is comprehensive and realistic. Upon receipt of the Administrator's program contracting approval authority, a contract is to be awarded to an organization qualified to perform an operations review as defined in paragraph (a) of this section. The operations review normally will be completed and delivered to FmHA within 60 days of the award date.

(2) Contract for an appraisal to be performed by an independent, qualified fee appraiser. Note: To the extent possible, the appraisal should be scheduled for completion no later than the completion date of the operations review.

(3) Complete an analysis of the operations review, appraisal, and other documented information, and make an eligibility determination.

(i) Eligibility determination. The State Director must conclude that the debtor is eligible for debt restructuring consideration. This conclusion will be clearly documented in the casefile based on a review of the following:

(A) The debtor acted in good faith with regard to the delinquent loan. The casefile must reflect the debtor's cooperation in exploring servicing alternatives. The casefile should contain no evidence of fraud, waste, or conversion by the debtor, and no evidence that the debtor violated the loan agreement or FmHA regulations.

(B) The delinquency was caused by circumstances beyond the control of the debtor. This determination will be based on the debtor's narrative on this issue, which is a required part of the application for debt restructuring, and a separate review of the debtor's casefile and operations.

(C) As part of the application for debt restructuring, the debtor submitted a proposed operating plan that presents feasible alternatives for addressing the delinquency.

(ii) *Debtor determined eligible.* If the debtor is determined to be eligible for debt restructuring, a determination of a net recovery value and level of debt the facility will support will be made. It is anticipated that meetings with the debtor, the contractor who performed the operations review, and others, as appropriate, could be necessary to develop these values; although it should be emphasized throughout these meetings that any calculations and conclusions reached are preliminary in nature, pending final review by the Administrator. For debt restructuring calculations and computing a feasible cash-flow projection, the following order and combinations of loan servicing actions will be followed:

(A) Loan deferral for up to 6 months.

(B) Interest rate reduction to not less than the poverty line rate as determined by FmHA Instruction 440.1, exhibit B (available in any FmHA Office). Interest rate reduction will be considered only in conjunction with an extension of the term of the loan to the remaining useful life of the facility or 40 years, whichever is less.

(C) Debt writedown. Other creditors of the debtor, representing a substantial portion of the total debt, are expected to participate in the development of a restructuring plan which includes debt writedown. Debt writedown participation by other creditors should be on a pro rata basis with the FmHA writedown. However, failure of these creditors to agree to participate in the plan shall not preclude the use of principal and interest writedown by FmHA if it is determined that this option results in the least cost to the Federal Government.

(iii) *Debtor determined ineligible.* If the State Director concludes that the debtor is not eligible for debt restructuring consideration for any of the reasons listed in paragraph (c)(3)(i) of this section, then the debtor will be notified by a letter that includes the following information:

(A) The basis for the determination;

(B) The next step in servicing the loan: possible acceleration if the delinquency is not cured; and

(C) The debtor may appeal this determination in accordance with subpart B of part 1900 of this chapter.

(iv) *State Director's recommendation.* Upon completion of the determination of net recovery value and restructured debt in accordance with paragraph (c)(3)(ii) of this section, and prior to formal presentation to the borrower, the State Director will forward a recommendation to the National Office with the following documentation:

(A) That all other servicing efforts have been exhausted as required in paragraph (b) of this section.

(B) Financial statements including balance sheets, income and expense, cash-flows for the most recent actual year, and projections for the next 3 years. The amount of FmHA's restructured debt and reserve account requirements are to be clearly indicated on the projected statements. Also, operating statistics including number of beds, patient days of care, outpatient visits, occupancy percentage, etc., for the same periods of time must be included.

(C) Copies of the operations review, developed for the particular loan, and appraisal.

(D) Calculations of the net recovery value.

(E) Debt restructuring calculations including a listing of the various servicing combinations used in these calculations as contained in paragraph (c)(3)(ii) of this section. For example:

(*1*) Interest rate reduced from the applicant's current rate on all loans to the poverty line rate as determined by FmHA instruction 440.1, exhibit B (available in any FmHA Office); and

(*2*) Extension of the terms from 25 to 30 years.

(F) Information concerning discussions with the debtor and their agreement or disagreement with the calculations and recommendations.

(G) If debt restructuring is proposed:

(*1*) A draft of Form FmHA 1951–33, if applicable, and any other necessary comments or requirements that may be required by OGC and Bond Counsel in § 1951.223 (c)(3) and (4) of subpart E of part 1951 of this chapter.

(*2*) A draft of Form FmHA 1956–1, if applicable. Complete only parts I, II, VI, and VIII. Part VI, "Debtor's Offer and Certification," will be in a separate attachment and contain the adjusted unpaid principal amount for which

FmHA approval is requested. In Part VI of the form, type "see attached."

(H) If the proposed restructured debt will not cash-flow or is less than the net recovery value, omit the items in paragraph (c)(3)(iv)(G) of this section.

(d) *National Office processing of State Director's request.*

(1) After reviewing the recommendation to either debt restructure or liquidate for the net recovery value, the Administrator, after concurring, modifying, or not concurring in the recommendation, will return the submission for further processing.

(2) If a debt writedown is used in the restructuring process, the amount will be included in the National Office transmittal memorandum. The draft Form FmHA 1956–1 will not need to be finalized and returned to the Administrator for signature. The State Director's signature on the final copy will be sufficient. However, a copy of the National Office memorandum is to be attached to the form when completed.

(e) *Debtor notification of debt restructuring and net recovery value calculations.* The State Director will provide a copy of the basis for the debt restructuring or net recovery determination to the debtor.

(1) If the value of the restructured loan is equal to, or greater than, the recovery value, the debtor will be made an offer to accept the restructured debt by using language similar to that provided in Guide 2 of this subpart (available in any FmHA Office) and including the following paragraphs:

(i) An introductory paragraph indicating that FmHA has concluded its consideration of the debtor's request;

(ii) A paragraph indicating FmHA's approval of the debt restructuring request and that acceptance must be received by FmHA within 45 days from receipt of this letter; and

(iii) That the debtor's acceptance will require the execution of a Shared Appreciation Agreement similar to Guide 4 of this subpart (available in any FmHA Office) and possible new debt instruments accompanied by Bond Counsel opinions.

(2) If the debt analysis calculations indicate that a restructured debt would be less than the net recovery value of the security, a letter using language similar to that provided in Guide 3 of this subpart (available in any FmHA Office), will be sent to the debtor that includes the following paragraphs:

(i) An introductory paragraph indicating that FmHA has concluded its consideration of the debtor's request;

(ii) Paragraphs indicating that:

(A) The debtor may pay FmHA the net recovery value of the loan. The debtor will be given 30 days from receipt of this letter to inform FmHA of its intent, 90 days to finalize the payoff, and will be notified that an election to pay off FmHA would require the execution of a Net Recovery Buy Out Recapture Agreement, similar to that provided in Guide 5 of this subpart (available in any FmHA Office); or

(B) If the debt is not paid off at the net recovery value, FmHA will proceed to liquidate the loan.

(f) *Debtor responses to debt restructuring and net recovery value calculations.* Responses from the debtor will be handled as follows:

(1) *Acceptance of FmHA's restructured debt offer.* When a debtor accepts the offer for debt restructuring, processing will be in accordance with § 1951.223 (c) of subpart E of part 1951 of this chapter using the adjusted unpaid principal and outstanding accrued interest at the Administrator's approved interest rate and terms. The debtor will be required to execute a Shared Appreciation Agreement which will provide that, should the debtor sell or transfer title to the facility within the next 10 years, FmHA is entitled to a portion of any gain realized. This agreement will include language similar to that found in Guide 4 of this subpart (available in any FmHA Office). The original of Form FmHA 1956–1, with appropriate attachments signed by the State Director, and a copy of the Shared Appreciation Agreement will be sent to the Finance Office. Note: All documents pertaining to this transaction will be sent to the Finance Office in one single complete package; and

(2) *Acceptance by debtor to pay off loan at the recovery value.* Processing of this transaction will be in accordance with § 1956.124 of this subpart. However, the account does not need to be accelerated. The debtor will be required to execute a Net Recovery Buy Out Recapture Agreement, similar to that found in Guide 5 of this subpart (available in any FmHA Office). The original of Form FmHA 1956–1, with appropriate attachments signed by the State Director, and a copy of the recorded Net Recovery Buy Out Recapture Agreement will be sent to the Finance Office. The executed Net Recovery Buy Out Recapture Agreement will be recorded in the county in which the facility is located. The Finance Office will credit the accounts of debtors who entered into Net Recovery Buy Out Recapture Agreements with the amount paid by the debtor (net recovery value). Note: All documents pertaining to this transaction will be sent to the Finance Office in one single complete package.

(g) *Collection and processing of recapture.*

(1) When FmHA becomes aware of the sale or transfer of title to the facility on which there is an effective Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any FmHA Office) or a Shared Appreciation Agreement (Guide 4 of this subpart available in any FmHA Office) outstanding and a determination is made that a recapture is appropriate, FmHA will notify the debtor of the following:

(i) Date and amount of recapture due; and

(ii) FmHA action to be taken if debtor does not respond within the designated timeframe with the amount of recapture due.

(2) When the recapture is received, the payment will be processed on Form FmHA 451–2 as a miscellaneous collection in accordance with subpart B of part 1951 of this chapter. The Form FmHA 451–2 along with a copy of the Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any FmHA Office) or Shared Appreciation Agreement (Guide 4 of this subpart available in any FmHA Office), as appropriate, will be forwarded to the Finance Office.

(3) When the amount of the recapture has been paid and credited to the debtor's account, the debtor will be released from liability by using Form FmHA 1965–8, "Release from Personal Liability," modified as appropriate.

(h) *No recapture due.* If FmHA determines there is no recapture due, the Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any FmHA Office) or Shared Appreciation Agreement (Guide 4 of this subpart available in any FmHA Office) will be appropriately annotated, the Recapture Agreement released from the record, and the Agreement returned to the debtor.

4. Section 1956.147 is amended by revising the word "borrower" to read "debtor" in paragraphs (a)(3)(iv) and (a)(3)(v)(B).

5. Section 1956.150 is revised to read as follows:

§ 1956.150 OMB Control Number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0124. Public reporting burden for this collection of information is estimated to vary from ½ hour to 30 hours per response with an average of 8.14 hours per response, including the

time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Dated: August 15, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–21877 Filed 9–6–94; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–SW–03–AD; Amendment 39–9021; AD 94–18–08]

Airworthiness Directives; McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc. Model 369, 369A (OH–6A), 369D, E, F, FF, H, HE, HS, and HM Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc. Model 369, 369A (OH–6A), 369D, E, F, FF, H, HE, HS, and HM series helicopters, that requires daily preflight checks and 100 hours time-in-service (TIS) inspections for tail rotor blade abrasion strip (abrasion strip) debonding until abrasion strip rivets (rivets) are installed. This amendment also supersedes a Priority Letter AD that currently requires installation of rivets, corrects tail rotor blade part numbers listed in the previous AD, and retains the daily preflight checks of the previous AD until rivets are installed to secure the abrasion strip. This AD provides a terminating action for the abrasion strip debonding and also seeks to clear up any confusion among operators caused by having a published AD and a Priority Letter that are applicable to the same helicopter part. This AD replaces both of those documents. This amendment is prompted by an accident resulting from the separation of an abrasion strip from a tail rotor blade and subsequent tail rotor separation. The actions specified by this AD are intended to prevent loss of the abrasion strip, separation of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective September 27, 1994.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of March 10, 1992 at 57 FR 5379 (February 14, 1992).

Comments for inclusion in the Rules Docket must be received by November 7, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–03–AD, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from McDonnell Douglas Helicopter Company, Technical Publications, Bldg. 530/B111, 5000 E. McDowell Road, Mesa, Arizona 85205–9797. This information may be examined at the FAA, Office of the Assistant Chief Counsel, Rules Docket No. 93–SW–03–AD, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–123L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806–2425, telephone (310) 988–5237, fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: On December 31, 1991, the FAA issued AD 92–02–15, Amendment 39–8151 (57 FR 5379, February 14, 1992), to require daily preflight checks and 100 hours TIS repetitive inspections for abrasion strip debonding until rivets are installed. That AD requires installation of the rivets within 300 hours TIS.

As a result of a more recent helicopter accident involving the separation of an abrasion strip, on October 16, 1992, the FAA issued Priority Letter (PL) AD 92–22–14 that superseded the existing AD 92–02–15. The PL AD corrects certain tail rotor blade part numbers as listed in AD 92–02–15 and retains the daily preflight checks of the previous AD 92–02–15 until rivets are installed. The PL AD further requires installation of the rivets within 25 hours TIS or within 7 days, whichever comes first.

Both AD 92–02–15, issued December 31, 1991 and the PL AD 92–22–14, issued October 16, 1992, require a visual check for evidence of debonding before the first flight of each day. However, AD 92–02–15 requires installation of rivets within 300 hours TIS while PL AD 92–22–14 requires installation of the rivets within 25 hours TIS or on or before 7 days after the effective date of that AD. Both of these ADs require the same corrective action but have different compliance times. Additionally, the PL AD did not specify whether the 7-day compliance time was in terms of "work" days or "calendar" days. As a result of having two ADs that require the same corrective action with only differing compliance times, and additionally failing to specifically describe the type of compliance day as that term was used in the PL AD, operators may be confused about when compliance is required. Such confusion may lead an operator to inadvertently fail to comply with the necessary safety requirements for these rotorcraft and result in an unsafe condition. Therefore, due to the criticality of the abrasion strip, the short compliance times, and the possible confusion as a result of having two effective ADs that require the same corrective action with one containing a potentially confusing compliance time, this rule must be issued immediately to correct an unsafe condition.

In addition to correcting the unsafe conditions described, this AD also provides that installation of the rivets to secure the abrasion strip constitutes terminating action for the requirements of this AD.

The checks required by this AD before the first flight of each day may be performed by an owner/operator (pilot) but must be entered into the aircraft records showing compliance with this AD in accordance with sections 43.11 and 91.417 (a)(2)(v) of the Federal Aviation Regulations. This AD allows a pilot to perform this check because it involves only a visual check for debonding of the abrasion strip from the tail rotor blade and is required only until rivets are installed. This check can be performed equally well by a pilot or a mechanic. It involves checking items similar to those items that a pilot checks during a preflight. Safety does not require that this check be performed by a mechanic before the first flight of each day. The AD does require that a mechanic inspect the tail rotor blades within 25 hours TIS or within 7 calendar days, whichever occurs first.

Since an unsafe condition has been identified that is likely to exist or