

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. 02-031-2]

Pink Bollworm Regulated Areas; Removal of Oklahoma**AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the pink bollworm regulations by removing the State of Oklahoma from the lists of quarantined States and regulated areas. Statewide trapping surveys conducted over the last 2 years have shown Oklahoma to be free of pink bollworm. The interim rule relieved restrictions on the interstate movement of regulated articles from Oklahoma that were no longer necessary.

EFFECTIVE DATE: The interim rule became effective on May 16, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Grefenstette, Assistant Director, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 138, Riverdale, MD 20737-1231; (301) 734-8676.

SUPPLEMENTARY INFORMATION:**Background**

The pink bollworm (*Pectinophora gossypiella* (Saunders)) is a destructive cotton pest found throughout many of the cotton-growing regions of the world. The larvae of the pink bollworm feed inside growing cotton bolls, destroying the cotton.

The regulations in Subpart—Pink Bollworm (7 CFR 301.52 through 301.52-10, referred to below as the regulations) contain quarantine restrictions aimed at preventing the spread of the pink bollworm. Section 301.52 contains, among other things, lists of quarantined States and regulated articles.

In an interim rule effective and published in the **Federal Register** on May 16, 2002 (67 FR 34817-34818, Docket No. 02-031-1), we amended the regulations by removing the State of Oklahoma from the lists of quarantined States and regulated areas. This interim rule also made nonsubstantive editorial changes to § 301.52-1 of the regulations.

Comments on the interim rule were required to be received on or before July 15, 2002. We did not receive any

comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 67 FR 34817-34818 on May 16, 2002.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 also issued under Sec. 204, Title II, Pub. L. 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 also issued under Sec. 203, Title II, Pub. L. 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 10th day of September 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02-23490 Filed 9-13-02; 8:45 am]

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DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 1230**

[No. LS-02-09]

Pork Promotion, Research, and Consumer Information Order: Rules and Regulations—Decrease in Assessment Rate and Decrease of Importer Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 (Act) and the Pork Promotion, Research, and Consumer Information Order (Order) thereunder, this final rule decreases the current rate of assessment of 0.45 percent of the market value of porcine

animals to 0.40 percent, and decreases the amount of assessment per pound due on imported pork and pork products (two- to four-hundredths of a cent per pound) to reflect the combined effect of the increase in the 2001 average price for domestic barrows and gilts (about 7 percent) and the decrease in the assessment rate. The assessment decrease will decrease annual funding of the promotion, research, and consumer information program by an estimated \$5 million to \$6 million with an estimated \$290,000 decrease in importer assessments. The assessment decrease reflects the National Pork Producers Delegate Body's (Delegate Body) desire to lessen the assessment burden on producers and make such funds available to pork producers and the industry. The adjustment in importer assessments also brings the equivalent market value of live animals from which imported pork and pork products are derived in line with the market value of domestic porcine animals. A Harmonized Tariff Schedule (HTS) number for prepared or preserved pork has also been added to the regulations.

EFFECTIVE DATE: September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, 202/720-1115.

SUPPLEMENTARY INFORMATION:**Executive Orders 12866 and 12988, the Regulatory Flexibility Act, and the Paperwork Reduction Act**

The Office of Management and Budget has waived the review process required by Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds therefrom from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an order may file a petition with the Department of Agriculture (USDA) stating that such order, a provision of such order or an obligation imposed in connection with such order is not in accordance with the law; and requesting

a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or does business has jurisdiction to review USDA's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (5 United States Code (U.S.C.) 601 *et seq.*). The effect of the Order upon small entities initially was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898). It was determined at that time that the Order would not have a significant effect upon a substantial number of small entities. Many of the estimated 81,000 pork producers and 500 importers may be classified as small entities under the Small Business Administration definition (13 CFR 121.201).

This final rule will decrease the rate of the assessment from 0.45 percent of the market value of porcine animals to 0.40 percent, and will decrease the cents per pound and per kilogram of assessments on imported pork and pork products subject to assessment. Adjusting the rate of assessment from 0.45 percent to 0.40 percent and decreasing the assessment on imported pork and pork products will result in an estimated decrease in assessments of \$5 million to \$6 million over a 12-month period. Of that amount, approximately \$290,000 will be attributed to the decrease in importer assessments. The gross market value of all swine marketed in the United States during 2000 exceeded \$11.7 billion. This decrease will reduce the assessment burden on producers. The adjustment in importer assessments also will bring the equivalent market value of live animals from which imported pork and pork products are derived in line with the market value of domestic porcine animals. An HTS number for prepared or preserved pork also will be added to the regulations. Therefore, the economic impact of the assessments will not be a significant part of the total market value of swine. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and

consumer information program. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, 56 FR 51635, 60 FR 29963, 61 FR 29002, 62 FR 26205, 63 FR 45936, 64 FR 44643, and 66 FR 67071) and assessments began on November 1, 1986. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and on imported porcine animals with an equivalent assessment on pork and pork products. However, that rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635), and to 0.45 percent effective September 3, 1995 (60 FR 29963). Based on the assessment rate of 0.45 percent, the total annual assessments collected during 2001 were approximately \$57.4 million. Assessments on imported pork and pork products accounted for about \$3.7 million of the total.

The Order requires that producers pay to the National Pork Board an assessment of 0.45 percent of the market value of each porcine animal upon sale. However, for purposes of collecting and remitting assessments, porcine animals are divided into three separate categories (1) feeder pigs, (2) slaughter hogs, and (3) breeding stock. The Order specifies that purchasers of feeder pigs, slaughter hogs, and breeding stock shall collect an assessment on these animals if assessments are due. The Order further provides that for the purpose of collecting and remitting assessments persons engaged as a commission merchant, auction market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

The Order requires importers of porcine animals to pay U.S. Customs Service (USCS), upon importation, the assessment of 0.45 percent of the porcine animal's declared value and importers of pork and pork products to pay USCS, upon importation, the assessment of 0.45 percent of the market value of the live porcine animals from which such pork and pork producers were produced.

The Act and § 1230.71 of the Order contain provisions for adjusting the initial rate of assessment. The Delegate Body has the responsibility to recommend the rate of assessment to the USDA. The 2002 Delegate Body, at its annual meeting on March 1–2, 2002, in Denver, Colorado, voted to recommend

to the USDA that the rate of assessment of 0.45 percent be decreased to 0.40 percent. There were 167 Delegate Body members appointed by the Secretary in 2002. At the Delegate Body meeting 144 delegates were present during voting and voted 50,750.1 valid share votes. States and importers are allotted one share per \$1,000 of the aggregated amount of assessment collected. There were 29,974.9 share votes cast in favor of the 0.05 percent decrease.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the rate of assessment or changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic and porcine animals and imported pork and pork products.

This final rule will decrease the amount of assessment on all of the imported pork and pork products subject to assessment as published in the **Federal Register** as a final rule December 28, 2001, and effective on January 28, 2002 (66 FR 67071). The assessment decrease reflects the Delegate Body's desire to lessen the assessment burden on producers and make such funds available to pork producers and the industry. The adjustment in importer assessments also will bring the equivalent market value of live animals from which imported pork and pork products are derived in line with the market value of domestic porcine animals. An HTS number for prepared or preserved pork also will be added to the regulations.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA's Agricultural Handbook No. 697 "Conversion Factors and Weights and Measurers." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 74 percent, which is the average dressing percentage of porcine animals in the United States as recognized by the industry. Thirdly, the equivalent value of the live porcine

animals is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as calculated by the USDA's, AMS, Livestock and Grain Market News (LGMN) Branch. Finally, the equivalent value is multiplied by the applicable assessment rate due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

Since the last adjustment was made in the amount of the assessment due on live hogs and imported pork and pork products (66 FR 67071), there has been a change in the way LGMN Branch reports hog prices. Due to the implementation of the Livestock Mandatory Price Reporting Program, LGMN no longer report hogs on a live basis because most of the industry moved to buying hogs on a carcass basis. Thus, the Iowa-Southern Minnesota hog reports are now reported on a carcass basis defined by muscle and fat. Previously, these reports were quoted for 49–52 percent lean yield barrows and gilts weighing an average of 240–280 pounds live weight. Therefore, the only consistent price available for hogs for calendar year 2001 is the average base carcass price for 51–52 percent lean hogs derived from the National Base Lean Hog Carcass Slaughter Cost Report. To convert this figure to a live basis, it must be multiplied by 74 percent, the average dressing percentage of porcine animals in the United States as recognized by the industry.

The average annual market price increased from \$42.70 per hundredweight in 2000 to \$45.87 per hundredweight in 2001, an increase of about 7 percent. The combined effect of the assessment rate decrease and the increase in the average annual market price will result in a decrease in assessments for all HTS numbers listed in the table in § 1230.110(b), 66 FR 67071; December 28, 2001, of an amount equal to two-to four-hundredths of a cent per pound, or as expressed in cents per kilogram, four-hundredths to nine-hundredths of a cent per kilogram. Based on Department of Commerce, Bureau of Census, data on the volume of pork and pork products imported during 2001, the decreases in the assessment amounts will result in an estimated \$290,000 decrease in importer assessments over a 12-month period. In addition, this rule adds a new HTS

number—1602.49.9000—to the table in § 1230.110(b). This HTS number has been assigned to prepared or preserved pork. In 2001, over 2,114 metric tons of prepared or preserved pork products were imported into the United States as reported by the Department of Commerce.

On July 19, 2002, AMS published in the **Federal Register** (67 FR 47474) a proposed rule which would (1) decreases the current rate of assessment of 0.45 percent of the market value of porcine animals to 0.40 percent, and (2) decreases the amount of assessment per pound due on imported pork and pork products (two-to four-hundredths of a cent per pound) to reflect the combined effect of the increase in the 2001 average price for domestic barrows and gilts (about 7 percent) and the decrease in the assessment rate. The proposal was published with a request for comments by August 19, 2002. Five comments were received. All of the commenters, which included the National Pork Board, the National Pork Producers Council, and three state pork producer associations, support the decrease of assessment rate. In addition, the Board provided information regarding the timing of the decrease in order to provide the Board with ample time to communicate an assessment rate change and to minimize the burden on those responsible for remitting pork checkoff assessments.

USDA carefully considered the comments and the recommendation of the Delegate Body. This action lessens the assessment burden on producers and importers. The effective date of September 30, 2002, gives the Board ample time to communicate this change and will not burden those that remit pork checkoff assessments. Accordingly, pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**.

This final rule adopts the decrease in the assessment rate from .45 percent of market value of porcine animals to .40 percent as proposed and decreases the amount of assessment per pound due on imported pork and pork products (two-to four-hundredths of a cent per pound) to reflect the combined effect of the increase in the 2001 average price for domestic barrows and gilts (about 7 percent) and the decrease in the assessment rate.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agriculture research, Marketing agreement, Meat

and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart B—[Amended]

2. Section 1230.110 is revised to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

(a) The following Harmonized Tariff Schedule (HTS) categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.0000	1 0.40
0103.91.0000	10.40
0103.92.0000	1 0.40

¹ percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.11.0000 .....	.25	.551150
0203.12.1010 .....	.25	.551150
0203.12.1020 .....	.25	.551150
0203.12.9010 .....	.25	.551150
0203.12.9020 .....	.25	.551150
0203.19.2010 .....	.29	.639334
0203.19.2090 .....	.29	.639334
0203.19.4010 .....	.25	.551150
0203.19.4090 .....	.25	.551150
0203.21.0000 .....	.25	.551150
0203.22.1000 .....	.25	.551150
0203.22.9000 .....	.25	.551150
0203.29.2000 .....	.29	.639334
0203.29.4000 .....	.25	.551150
0206.30.0000 .....	.25	.551150
0206.41.0000 .....	.25	.551150
0206.49.0000 .....	.25	.551150
0210.11.0010 .....	.25	.551150
0210.11.0020 .....	.25	.551150
0210.12.0020 .....	.25	.551150
0210.12.0040 .....	.25	.551150
0210.19.0010 .....	.29	.639334
0210.19.0090 .....	.29	.639334
1601.00.2010 .....	.34	.749564
1601.00.2090 .....	.34	.749564
1602.41.2020 .....	.37	.815702
1602.41.2040 .....	.37	.815702
1602.41.9000 .....	.25	.551150
1602.42.2020 .....	.37	.815702
1602.42.2040 .....	.37	.815702
1602.42.4000 .....	.25	.551150
1602.49.2000 .....	.34	.749564
1602.49.4000 .....	.29	.639334

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
1602.49.9000 .....	.29	.639334

3. Section 1230.112 is revised to read as follows:

§ 1230.112 Rate of assessment.

In accordance with § 1230.71(d) the rate of assessment shall be 0.40 percent of market value.

Dated: September 11, 2002.

A.J. Yates,

Administrator Agricultural Marketing Service.

[FR Doc. 02-23549 Filed 9-12-02; 10:36 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1717

RIN 0572-AB63

Mergers and Consolidations of Electric Borrowers

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its' regulations to provide the Administrator with loan processing prioritization authority for recently merged companies. This change will allow the Administrator to grant or decline priority or grant priority for a limited amount of a loan application. This action will allow for lending priority to newly merged companies and provide greater opportunity to provide loans to as many borrowers as possible.

EFFECTIVE DATE: September 16, 2002.

FOR FURTHER INFORMATION CONTACT:

Patrick R. Sarver, Management Analyst, Rural Utilities Service, Electric Program, Room 4024 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250-1560, Telephone: 202-690-2992, FAX: 202-690-0717, e-mail: psarver@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which

may require consultation with State and local officials. See the final rule related notice titled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) advising that RUS loans and loan guarantees from coverage were not covered by Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of RUS has determined that this rule will not have significant impact on a substantial number of small entities. The RUS electric loan program provides loans and loan guarantees to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. Small entities are not subjected to any requirements, which are not applied equally to large entities. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572-0032 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325, telephone number (202) 512-1800.

Background

For reasons set forth in the proposed rule dated November 1, 2001, 66 FR 55130, and to provide a greater opportunity to provide loans to as many borrowers as possible, the Rural Utilities Service (RUS) is amending 7 CFR part 1717, subpart D, to provide the Administrator the flexibility to limit the amount of a loan to a successor (surviving business entity) following a merger.

No comments were received by RUS as the result of the proposed rule.

List of Subjects in 7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Electric utilities, Intergovernmental relations, Investments, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations, is amended as follows:

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart D—Mergers and Consolidations of Electric Borrowers

2. Section 1717.154 is amended by:
A. Revising paragraph (a)(1);
B. Redesignating paragraph (a)(2) to (a)(3), and