

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 04-032-2]

### Japanese Beetle; Domestic Quarantine and Regulations

**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 Japanese beetle regulations to add the State of Arkansas to the list of quarantined States. The interim rule was necessary to prevent the artificial spread of Japanese beetle into noninfested areas of the United States.

**DATES:** The interim rule became effective on July 6, 2004.

**FOR FURTHER INFORMATION CONTACT:** Dr. S. Anwar Rizvi, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-4313.

### SUPPLEMENTARY INFORMATION:

#### Background

The Japanese beetle (*Popillia japonica*) feeds on fruits, vegetables, and ornamental plants and is capable of causing damage to over 300 potential hosts. The Japanese beetle quarantine and regulations, contained in 7 CFR 301.48 through 301.48-8 (referred to below as the regulations), quarantine the States of Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio,

Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia and restrict the interstate movement of aircraft from regulated airports in these States in order to prevent the artificial spread of the Japanese beetle to noninfested States where the beetle could become established (referred to below as protected States). The list of quarantined States, as well as the list of protected States, can be found in § 301.48.

In an interim rule effective and published in the **Federal Register** on July 6, 2004 (69 FR 40533-40534, Docket No. 04-032-1), we amended the Japanese beetle regulations by adding Arkansas to the list of quarantined States in § 301.48.

Comments on the interim rule were required to be received on or before September 7, 2004. 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 69 FR 40533-40534 on July 6, 2004.

Done in Washington, DC, this 5th day of October 2004.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04-22791 Filed 10-8-04; 8:45 am]

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## Federal Register

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1730

#### RIN 0572-AB92

### Electric System Emergency Restoration Plan

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture's Rural Development Utilities Programs, is amending its regulations on Electric System Operations and Maintenance to require electric program distribution, generation and transmission borrowers to expand a currently established Emergency Restoration Plan (ERP), or, if no ERP is currently established, to create an ERP. The ERP shall detail how the borrower will restore its system in the event of a system-wide outage resulting from a major natural or manmade disaster or other causes. The ERP shall include preventative measures and procedures for emergency recovery from physical and cyber attacks to the borrower's electric systems and core businesses, and shall also address Homeland Security concerns. This additional requirement is not entirely new to borrowers as RUS has recommended similar "plans" in the past. RUS Bulletin 1730-1, "Electric System Operation and Maintenance (O&M)," provides language addressing the security of RUS borrowers' electric systems.

**DATES:** This rule is effective October 12, 2004. Borrowers of RUS loan funds will have until July 12, 2005 to certify that they have performed a Vulnerability and Risk Assessment, and January 12, 2006 to certify that they have an ERP. The completion of the first Exercise of the ERP must occur on or before January 12, 2007.

**FOR FURTHER INFORMATION CONTACT:** John B. Pavek, Chief, Distribution Branch, Rural Utilities Service, Electric Program, Room 1256 South Building, Stop 1569, 1400 Independence Ave., SW., Washington, DC 20250-1569, Telephone: 202-720-5082, Fax: 202-720-7491, E-mail: [John.Pavek@usda.gov](mailto:John.Pavek@usda.gov).

### SUPPLEMENTARY INFORMATION:

**Executive Order 12866**

This final 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 final 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 rural electrification loans and loan guarantees are excluded from the scope of Executive Order 12372.

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this final 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 may be initiated.

**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 states is not required.

**Regulatory Flexibility Act Certification**

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since RUS is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of final rulemaking with respect to the subject matter of this rule.

**Information Collection and Bookkeeping Requirements**

In accordance with Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget

(OMB). These requirements have been approved by emergency clearance under OMB Control Number 0572-0140.

Comments on this notice must be received by December 13, 2004.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology.

Comments may be sent to: Dawn Wolfgang, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 5166-South, STOP 1522, Washington, DC 20250-1522. Fax: (202) 720-4120. E-mail: [dawn.wolfgang@usda.gov](mailto:dawn.wolfgang@usda.gov).

*Title:* Electric System Emergency Restoration Plan.

*OMB Control Number:* 0572-0140.

*Type of Request:* Request for approval of a currently approved information collection.

*Abstract:* Electric power systems have been identified in Presidential Decision Directive 63 (PDD-63), May 1998, as one of the critical infrastructures of the United States. The term "critical infrastructure" is defined in section 1016(e) of the USA Patriot Act of 2001 (42 U.S.C. 5195c(e)) as "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters." Damage to or loss of critical or significant parts of the U.S. electric power system can cause enormous damage to the environment, loss of life and economic loss and can affect the national security of the United States. Such damage or loss can be caused by acts of nature or human acts, ranging from an accident to an act of terrorism. Of particular concern are physical and cyber threats from terrorists. Protecting America's critical infrastructure is the shared responsibility of Federal, State, and local government in active partnership with the private sector. Homeland Security Presidential Directive 7

(HSPD-7), December 2003, established a national policy for Federal departments and agencies to identify and prioritize United States critical infrastructure and key resources and to protect them from terrorist attacks. America's open and technologically complex society includes a wide array of critical infrastructure and key resources that are potential terrorist targets. The majority of these are owned and operated by the private sector and State or local governments. These critical infrastructures and key resources are both physical and cyber-based and span all sectors of the economy. A substantial portion of the electric infrastructure of the United States resides in, and is maintained by, rural America. To ensure that the electric infrastructure in rural America is adequately protected, RUS is instituting the requirement that all current electric borrowers enhance an existing ERP or, if none exists, develop and maintain an ERP.

Title 7 CFR Part 1730, Electric System and Maintenance, establishes a requirement for electric program distribution, generation, and transmission borrowers to develop an ERP or expand an existing ERP and to provide RUS with a written certification that they have an ERP based upon a VRA.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 30 minutes per response.

*Respondents:* Not for profit.

*Estimated Number of Respondents:* 676.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 338 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, Rural Utilities Service at (202) 720-0812.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Unfunded Mandates**

This final rule contains no Federal mandates under the regulatory provision of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. Chapter 25) pursuant to exceptions therein for State, local, and tribal governments or the private sector.

**National Environmental Policy Act Certification**

The Administrator of RUS has determined that this final rule will not significantly affect the quality of the

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 final 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

The term "critical infrastructure" is defined in section 1016(e) of the USA Patriot Act of 2001 (42 U.S.C. 5195c(e)) as "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters." Electric power systems have been identified in Presidential Decision Directive 63 (PDD-63), May 1998, as one of the critical infrastructures of the United States.

The United States electric power system (electric power system) consists of three distinct components: Generation facilities, transmission facilities (including bulk transmission and subtransmission facilities) and distribution facilities. Specific definitions of generation, transmission and distribution facilities are located in 7 CFR 1710.2. The other critical infrastructures identified in PDD-63 are all dependant to some degree upon the full and continuous functioning of the electric power system. Damage to or loss of critical or significant parts of the electric power system can cause enormous damage to the environment, loss of life and economic loss and can affect the national security of the United States. Such damage or loss to the electric power system can be caused by acts of nature or human acts, ranging from an accident to an act of terrorism. Of particular concern are physical and cyber threats from terrorists.

RUS borrowers have always had a duty to RUS to maintain their respective systems. In performing this duty, a borrower furthers the purposes of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) while also preserving the value of its system to serve as collateral for repayment of

RUS assistance. Generally speaking, the scope of this duty is frequently measured against prudent utility practices. Thus, it is entirely appropriate for RUS to expect that its borrowers will be aware of and following developing standards for private sector emergency preparedness and business continuity. A voluntary standard is emerging within the private sector and the requirements of this final rule are consistent with that standard. The latest evidence of the emerging standards in this area may be found on page 398 of the *Final Report of the National Commission on Terrorist Attacks upon the United States* (the "Commission") issued on July 22, 2004 (the "9/11 Report").

The 9/11 Report notes that the Commission asked the American National Standards Institute ("ANSI") to develop a consensus on a "National Standard of Preparedness" for the private sector. As a result of public sessions, ANSI recommended that the Commission endorse a voluntary National Preparedness Standard based on the existing American National Standard on Disaster/Emergency Management and Business Continuity Programs ("NFPA 1600"). The Commission has done so and it has also explicitly encouraged the insurance and credit rating industries to look closely at a company's compliance with the ANSI standard in assessing its insurability and creditworthiness. The Commission wrote: "We believe that compliance with the standard should define the standard of care owed by a company to its employees and the public for legal purposes."

The RUS purpose in referring to these recent developments is not to suggest that RUS borrowers must comply with NFPA 1600. However, RUS does wish to call attention to the fact that this final rule is being issued at a time when there appears to be a widespread recognition that emergency preparedness and business continuity is "a cost of doing business in the post-9/11 world," and thus properly the concern of the rural utility sector and of RUS as a major provider of financing to this sector.

A substantial portion of the electric infrastructure of the United States is located, and maintained by, rural America. To ensure that the electric infrastructure in rural America is adequately protected, and that security for RUS electric loans is adequately maintained and protected, RUS is instituting the requirement that all current electric borrowers conduct a Vulnerability and Risk Assessment (VRA) of their respective systems and utilize the results of this assessment to

enhance an existing ERP or, if none exists, develop and maintain an ERP. Prior to approving any new RUS electric program grant, loan or loan guarantee, applicants will have to demonstrate that they have an ERP.

The VRA is utilized to identify specific assets and infrastructure owned or served by the electric utility, determine the criticality and risk level associated with such assets and infrastructure including a risk versus cost analysis, identify threats and vulnerabilities, if any, review existing mitigation procedures, and assist in the development of new and additional mitigation procedures, if necessary. The ERP will provide written procedures detailing response and restoration efforts in the event of a major system outage resulting from a natural or man made disaster. An annual Exercise of the ERP will ensure operability and employee competency and serve to identify and correct deficiencies in the existing ERP. This final rule defines "Exercise" to mean a borrower or borrowers' participation in a tabletop execution of, or actual implementation of, the ERP to verify the operability of the ERP. The Exercise may be implemented singly by an individual borrower, or by an individual borrower as a participant in a multi-party (to include utilities, government agencies and other participants or combination thereof) tabletop execution or actual implementation of the ERP. This final rule defines "Tabletop" to mean a hypothetical emergency response scenario in which participants will identify the policy, communication, resources, data, coordination, and organizational elements associated with an emergency response. The Exercise must, at a minimum, verify:

1. Operability of alert and notification systems;
2. Efficacy of plan;
3. Employee competency with ERP procedures;
4. Points of contact (POC) of key personnel, both internally and externally; and
5. Contact numbers for POCs.

On March 19, 2004, RUS published a proposed rule in the **Federal Register**, at 69 FR 12989, which proposed to require electric program distribution, generation and transmission borrowers to expand a currently established ERP, or if no ERP is currently established, to create an ERP in accordance with 7 CFR part 1730.

RUS received 13 letters and one e-mail on this proposed rule by the comment deadline of May 3, 2004. Comments were received from Enervision, Inc., Gascosage Electric

Cooperative, North Dakota Association of Rural Electric Cooperatives, the National Rural Electric Cooperative Association, Wheller, Van Sickle & Associates, S.C. on behalf of Dairyland Power, Alabama Rural Electric Association of Cooperatives, Association of Electric Cooperatives of Virginia, Maryland and Delaware, Arkansas Electric Cooperative Corporation, Sunflower Electric Power Corporation, South Dakota Rural Electric Cooperative Association, Carroll Electric Membership Corporation, Great River Energy, Tri-State Generation & Transmission Association, Inc. and the Electric Cooperatives of South Carolina, Inc. Ninety three percent of the respondents supported the revision to 7 CFR part 1730, which requires electric program distribution, generation and transmission borrowers to establish and annually exercise an ERP.

One respondent did not support the proposed rule. The basis for its opposition was that, due to the small size of the utility, recordkeeping would strain the existing workforce. The respondent stated that it has already established an Emergency and Disaster Plan that effectively details guidelines for restoring its system should a disaster occur, provides preventative measures to preclude such an event and incorporates Homeland Security issues.

RUS believes that, like the respondent above, most utilities already have a similar plan in place, commonly referred to as a storm plan, and that the final rule will only require a modification of such plans. Borrowers will only have to modify their existing plan to add those items identified in § 1730.28 that they have not already incorporated. There is not a significant amount of additional recordkeeping required. Section 1730.22, "Borrower Analysis" details the requirements for records of inspection which includes RUS Form 300, "Review Rating Summary," on which a borrower indicates that it has an ERP. The self-certification of completion of a VRA and ERP can be completed in simple letter form as outlined in § 1730.26(b) of the final rule. This self-certification letter will be the only document submitted to and maintained by RUS with respect to the VRA and ERP.

While the overall comments received from the remainder of the respondents were generally favorable, there were requests for additional clarification on the following items:

1. Timeframe for implementation.
2. Criteria for identification of critical assets (utility critical and National critical).
3. Requirements for self-certification.

4. Can borrowers collectively develop an ERP and exercise such ERP jointly?

Additionally, there were a few specific questions regarding RUS' relationship with the North American Electric Reliability Council (NERC) and any possible contradiction to NERC requirements or other agencies that have a certain degree of responsibility in the electric sector such as the Nuclear Regulatory Commission (NRC). There were additional suggested requests that involved items to be included in a guide bulletin to assist RUS borrowers to comply with the proposed regulation.

RUS provided the clarifications requested on the timeframe for implementation and, as requested, extended the timeframe to complete a VRA. RUS also provided explicit language regarding the basis for identification of critical assets or infrastructure identified as elements of national security, provided detailed instructions for self-certification, and acknowledges that the ERP may be developed jointly by electric utilities. Further, RUS acknowledges that the annual exercise of an ERP may be conducted by a borrower as a participant in a multi-party exercise. RUS agrees with the comments regarding the creation of a guide bulletin which shall include a discussion of RUS' relationship with NERC. A guide bulletin is being developed by RUS and will be made available to electric borrowers to assist in implementing the requirements of the final rule. Nothing in this final rule supercedes any requirements imposed or dictated by the Nuclear Regulatory Commission (NRC).

#### **List of Subjects in 7 CFR Part 1730**

Electric power, Loan programs—energy, Reporting and recordkeeping requirement, Rural areas.

- For the reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations, part 1730, is amended to read follows:

#### **PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE**

- 1. The authority citation for part 1730 continues to read as follows:

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

#### **Subpart B—Operations and Maintenance Requirements**

- 2. Section 1730.20 is revised to read as follows:

##### **§ 1730.20 General.**

Each electric program distribution, transmission and generation borrower

(as defined in § 1710.2) shall operate and maintain its system in compliance with prudent utility practice, in compliance with its loan documents, and in compliance with all applicable laws, regulations and orders, shall maintain its systems in good repair, working order and condition, and shall make all needed repairs, renewals, replacements, alterations, additions, betterments and improvements, in accordance with applicable provisions of the borrower's security instrument. Each borrower is responsible for ongoing operations and maintenance programs, individually or regionally performing a system security Vulnerability and Risk Assessment (VRA), establishing and maintaining an Emergency Restoration Plan (ERP), maintaining records of the physical, cyber and electrical condition and security of its electric system and for the quality of services provided to its customers. The borrower is also responsible for all necessary inspections and tests of the component parts of its system, and for maintaining records of such inspections and tests. Each borrower shall budget sufficient resources to operate and maintain its system and annually exercise its ERP in accordance with the requirements of this part. An actual manmade or natural event on the borrowers system in which a borrower utilizes a significant portion of its ERP shall count as an annual exercise for that calendar year, provided that after conclusion of the event, the borrower verifies accuracy of the emergency points-of-contact (POC) and the associated contact numbers as listed in their ERP. For portions of the borrower's system that are not operated by the borrower, if any, the borrower is responsible for ensuring that the operator is operating and maintaining the system properly in accordance with the operating agreement.

■ 3. Section 1730.21 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 1730.21 Inspections and tests.**

(a) Each borrower shall conduct all necessary inspections and tests of the component parts of its electric system, annually exercise its ERP, and maintain records of such inspections and tests. For the purpose of this part, "Exercise" means a borrower's Tabletop execution of, or actual implementation of, the ERP to verify the operability of the ERP. Such Exercise may be performed singly by an individual borrower, or as an active participant in a multi-party (to include utilities, government agencies and other participants or combination thereof) Tabletop execution or actual

full implementation of the ERP. For the purpose of this part, "Tabletop" means a hypothetical emergency response scenario in which participants will identify the policy, communication, resources, data, coordination, and organizational elements associated with an emergency response.

\* \* \* \* \*

(c) Inspections of facilities must include a determination of whether the facility complies with the National Electrical Safety Code, National Electrical Code (as applicable), and applicable State or local regulations and whether additional security measures are considered necessary to reduce the vulnerability of those facilities which, if damaged or destroyed, would severely impact the reliability and security of the electric power grid, cause significant risk to the safety and health of the public and/or impact the ability to provide service to consumers over an extended period of time. The electric power grid, also known as the transmission grid, consists of a network of electrical lines and related facilities, including certain substations, used to connect distribution facilities to generation facilities, and includes bulk transmission and subtransmission facilities as defined in § 1710.2 of this title. Any serious or life-threatening deficiencies shall be promptly repaired, disconnected, or isolated in accordance with applicable codes or regulations. Any other deficiencies found as a result of such inspections and tests are to be recorded and those records are to be maintained until such deficiencies are corrected or for the retention period required by paragraph (b) of this section, whichever is longer.

■ 4. Section 1730.22 is amended by revising paragraph (a) and paragraph (b) introductory text to read as follow:

#### **§ 1730.22 Borrower analysis.**

(a) Each borrower shall periodically analyze and document its security, operations and maintenance policies, practices, and procedures to determine if they are appropriate and if they are being followed. The records of inspections and tests are also to be reviewed and analyzed to identify any trends which could indicate deterioration in the physical or cyber condition or the operational effectiveness of the system or suggest a need for changes in security, operations or maintenance policies, practices and procedures. For portions of the borrower's system that are not operated by the borrower, if any, the borrower's written analysis would also include a

review of the operator's performance under the operating agreement.

(b) When a borrower's security, operations and maintenance policies, practices, and procedures are to be reviewed and evaluated by RUS, the borrower shall:

\* \* \* \* \*

- 5. Section 1730.26 is amended by:
- A. Revising the section heading;
- B. Designating the text as paragraph (a) and adding a paragraph heading; and
- C. Adding a new paragraph (b).

These additions are to read as follows:

#### **§ 1730.26 Certification.**

(a) *Engineer's certification.* \* \* \*

(b) *Emergency Restoration Plan certification.* The borrower's Manager or Chief Executive Officer shall provide written certification to RUS stating that a VRA has been satisfactorily completed that meets the criteria of § 1730.27 (a), (b), (c), or (d), as applicable and § 1730.27(e)(1) through (e)(8), and that the borrower has an ERP that meets the criteria of § 1730.28 (a), (b), (c), or (d), as applicable, and § 1730.28 (e), (f), and (g). The written certification shall be in letter form. Applicants for new RUS electric loans, loan guarantees or grants shall include the written certification in the application package submitted to RUS. If the self-certification of an ERP and VRA are not received as set forth in this section, approval of the loan, loan guarantees or grants will not be considered until the certifications are received by RUS.

- 5. Sections 1730.27, 1730.28 and 1730.29 are added to read as follows:

#### **§ 1730.27 Vulnerability and Risk Assessment (VRA).**

(a) Each borrower with an approved RUS electric program loan as of October 12, 2004 shall perform an initial VRA of its electric system no later than July 12, 2005. Additional or periodic VRA's may be necessary if significant changes occur in the borrower's system, and records of such additional assessments shall be maintained by the borrower.

(b) Each applicant that has submitted an application for an RUS electric program loan or grant prior to October 12, 2004, but whose application has not been approved by RUS by such date, shall perform an initial VRA of its electric system in accordance with § 1730.27(a).

(c) Each applicant that submits an application for an RUS electric program loan or grant between October 12, 2004 and July 12, 2005 shall perform an initial VRA of its electric system in accordance with § 1730.27(a).

(d) Each applicant that submits an application for an RUS electric program

loan or grant on or after July 12, 2005 shall include with its application package a letter certification that such applicant has performed an initial VRA of its electric system. Additional or periodic VRA's may be necessary if significant changes occur in the borrower's system, and records of such additional assessments shall be maintained by the borrower.

(e) The VRA shall include identifying:

(1) Critical assets or facilities considered necessary for the reliability and security of the electric power grid as described in § 1730.21(c);

(2) Facilities that if damaged or destroyed would cause significant risk to the safety and health of the public;

(3) Critical assets or infrastructure owned or served by the borrower's electric system that are determined, identified and communicated as elements of national security by the consumer, State or Federal government;

(4) External system impacts (interdependency) with loss of identified system components;

(5) Threats to facilities and assets identified in paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) of this section;

(6) Criticality and risk level of the borrower's system;

(7) Critical asset components and elements unique to the RUS borrower's system; and

(8) Other threats, if any, identified by an individual borrower.

#### **§ 1730.28 Emergency Restoration Plan (ERP).**

(a) Each borrower with an approved RUS electric program loan as of October 12, 2004 shall have a written ERP no later than January 12, 2006. The ERP should be developed by the borrower individually or in conjunction with other electric utilities (not all having to be RUS borrowers) through the borrower's unique knowledge of its system, prudent utility practices (which includes development of an ERP) and the borrower's completed VRA. If a joint electric utility ERP is developed, each RUS borrower shall prepare an addendum to meet the requirements of paragraphs (e), (f), and (g) of this section as it relates to its system.

(b) Each applicant that has submitted an application for an RUS electric program loan or grant prior to October 12, 2004, but whose application has not been approved by RUS by such date, shall have a written ERP in accordance with § 1730.28(a).

(c) Each applicant that submits an application for an RUS electric program loan or grant between October 12, 2004 and January 12, 2006, shall have a written ERP in accordance with § 1730.28(a).

(d) Each applicant that submits an application for an RUS electric program loan or grant on or after January 12, 2006 shall include with its application package a letter certification that such applicant has a written ERP.

(e) The ERP shall include:

(1) A list of key contact emergency telephone numbers (emergency agencies, borrower management and other key personnel, contractors and equipment suppliers, other utilities, and others that might need to be reached in an emergency);

(2) A list of key utility management and other personnel and identification of a chain of command and delegation of authority and responsibility during an emergency;

(3) Procedures for recovery from loss of power to the headquarters, key offices, and/or operation center facilities;

(4) A Business Continuity Section describing a plan to maintain or re-establish business operations following an event which disrupts business systems (computer, financial, and other business systems); and

(5) Other items, if any, identified by the borrower as essential for inclusion in the ERP.

(f) The ERP must be approved and signed by the borrower's Manager or Chief Executive Officer, and approved by the borrower's Board of Directors.

(g) Copies of the most recent approved ERP must be made readily available to key personnel at all times.

(h) The ERP shall be Exercised at least annually to ensure operability and employee familiarity. Completion of the first exercise of the ERP must occur on or before January 12, 2007.

(i) If modifications are made to an existing ERP:

(1) The modified ERP must be prepared in compliance with the provisions of paragraphs (e), (f), and (g) of this section; and

(2) Additional Exercises may be necessary to maintain employee operability and familiarity.

(j) Each borrower shall maintain records of such Exercises.

#### **\$ 1730.29 Grants and Grantees.**

For the purposes of this part, the terms "borrower" shall include recipients of RUS electric program grants, and "applicant" shall include applicants for such grants. References to "security documents" shall, with respect to recipients of RUS electric program grants, include grant agreements and other grant-related documents.

Dated: September 24, 2004.

**Hilda Gay Legg,**

*Administrator, Rural Utilities Service.*

[FR Doc. 04-22779 Filed 10-8-04; 8:45 am]

**BILLING CODE 3410-15-P**

## **DEPARTMENT OF AGRICULTURE**

### **Animal and Plant Health Inspection Service**

#### **9 CFR Part 52**

**[Docket No. 98-123-7]**

**RIN 0579-AB10**

#### **Pseudorabies in Swine; Payment of Indemnity**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rules as final rule.

**SUMMARY:** We are adopting as a final rule, without change, two interim rules that amended the animal health regulations. The first interim rule established regulations to provide for the payment of indemnity for the voluntary depopulation of herds of swine known to be infected with pseudorabies, and the second interim rule amended the regulations to provide that the indemnity payment will be equal to the difference between the net salvage received and the fair market value of the swine destroyed. The second interim rule also provided for the payment of indemnity for breeding sows destroyed because of pseudorabies. The interim rules allowed for the payment of indemnity from accelerated pseudorabies eradication program funds for swine destroyed because of pseudorabies and were necessary to further pseudorabies eradication efforts and to protect swine not infected with pseudorabies from the disease.

**DATES:** The interim rules became effective January 12, 1999, and April 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Adam Grow, Senior Staff Veterinarian, Swine Health and Disease Programs, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231; (301) 734-3752.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In an interim rule effective January 12, 1999, and published in the **Federal Register** on January 15, 1999 (64 FR 2545-2550, Docket No. 98-123-2), we

established regulations in 9 CFR part 52 to provide for the payment of indemnity by the Animal and Plant Health Inspection Service (APHIS) for the voluntary depopulation of herds of swine known to be infected with pseudorabies. That interim rule, which was intended to encourage the depopulation of infected herds, was necessary to accelerate pseudorabies eradication efforts and to protect swine not infected with pseudorabies from the disease.

We solicited comments concerning the interim rule for 60 days ending March 16, 1999. In a technical amendment published on March 17, 1999 (64 FR 13064-13065, Docket No. 98-123-3), we extended that comment period by an additional 30 days. We received two comments by the April 16, 1999, close of the extended comment period. They were from a trade organization and a U.S. veterinary medical association. The comments are discussed below.

One commenter requested that APHIS consider amending the regulations to require that premises depopulated of swine because of pseudorabies not be restocked for at least 30 days following cleaning and disinfecting, or until an appropriate length of time has passed as determined by a pseudorabies epidemiologist.

In response to that comment, we published the March 17, 1999, technical amendment mentioned above to clarify the provisions contained in the interim rule regarding the waiting period that must be observed before restocking premises depopulated because of pseudorabies. In that technical amendment, we amended the regulations in part 52 to provide that premises that have been depopulated because of pseudorabies may be restocked with swine 30 days following an approved cleaning and disinfection, unless an official pseudorabies epidemiologist determines that a shorter or longer period of time is adequate or necessary to protect new animals against infection. Because the March 1999 technical amendment addressed the commenter's concern, no further response to that comment is necessary in this document.

Both commenters raised concerns that fell outside of the scope of the January 1999 interim rule. One commenter recommended that APHIS increase surveillance to ensure detection of infected animals and requested that APHIS make available Federal funding for vaccines when State funding proves inadequate. The second commenter urged APHIS to increase the speed at