

The factors that FNS will consider when reviewing a State agency's request will include the size of the request relative to the level of the State agency's E&T spending in prior years, the specificity of the State agency's plan for spending carryover funds, and the quality of program and scope of impact for the State's E&T program and proposed use of carryover funds.

\* \* \* \* \*

(3) *Additional allocations.* In addition to the E&T program grants discussed in paragraph (d)(1) of this section, FNS will allocate \$20 million in Federal funds each fiscal year to State agencies that ensure availability of education, training, or workfare opportunities that permit ABAWDs to remain eligible beyond the 3-month time limit.

(i) To be eligible, a State agency must make and comply with a commitment, or "pledge," to use these additional funds to defray the cost of offering a position in an education, training, or workfare component that fulfills the ABAWD work requirement, as defined in § 273.24(a), to each applicant and recipient who is:

(A) In the last month of the 3-month time limit described in § 273.24(b);

(B) Not eligible for an exception to the 3-month time limit under § 273.24(c);

(C) Not a resident of an area of the State granted a waiver of the 3-month time limit under § 273.24(f); and

(D) Not included in each State agency's 15 percent ABAWD exemption allotment under § 273.24(g).

(ii) While a participating pledge State may use a portion of the additional funding to provide E&T services to ABAWDs who do not meet the criteria discussed in paragraph (d)(3)(i) of this section, it must guarantee that the ABAWDs who do meet the criteria are provided the opportunity to remain eligible.

(iii) State agencies will have one opportunity each fiscal year to take the pledge described in paragraph (d)(3)(i) of this section. An interested State agency, in its E&T Plan for the upcoming fiscal year, must include the following:

(A) A request to be considered as a pledge State, along with its commitment to comply with the requirements of paragraph (d)(3)(i) of this section;

(B) The estimated costs of complying with its pledge;

(C) A description of management controls it has established to meet the requirements of the pledge;

(D) A discussion of its capacity and ability to serve vulnerable ABAWDs;

(E) Information about the size and special needs of the State's ABAWD population; and

(F) Information about the education, training, and workfare components that it will offer to allow ABAWDs to remain eligible.

(iv) If the information provided in accordance with paragraph (d)(3)(iii) of this section clearly indicates that the State agency will be unable to fulfill its commitment, FNS may require the State agency to address its deficiencies before it is allowed to participate as a pledge State.

(v) If the State agency does not address its deficiencies by October 1 it will not be allowed to participate as a pledge State.

(vi) No pledges will be accepted after the beginning of the new fiscal year on October 1.

(vii) (A) Once FNS determines how many State agencies will participate as pledge States in the upcoming fiscal year, it will, as early in the fiscal year as possible, allocate among them the \$20 million based on the number of ABAWDs in each participating State who do not reside in an area subject to a waiver granted in accordance with § 273.24(f) or who are not included in each State agency's 15 percent ABAWD exemption allowance under § 273.24(g), as a percentage of such ABAWDs in the participating States. FNS will determine each participating State agency's percentage of ABAWDs using the most recent Quality Control (QC) survey data adjusted for changes in its caseload.

(B) Each participating State agency's share of the \$20 million will be disbursed in accordance with paragraph (d)(6) of this section.

(C) Each participating State agency must meet the fiscal recordkeeping and reporting requirements of paragraph (d)(7) of this section.

(viii) If a participating State agency notifies FNS that it will not obligate or expend its entire share of the additional funding allocated to it for a fiscal year, FNS will reallocate the unobligated, unexpended funds to other participating State agencies during the fiscal year, as it considers appropriate and equitable, on a first come-first served basis. FNS will notify other pledge States of the availability of additional funding. To qualify, a pledge State must have already obligated its entire annual 100 percent Federal E&T grant, excluding an amount that is proportionate to the number of months remaining in the fiscal year, and it must guarantee in writing that it intends to obligate its entire grant by the end of the fiscal year. A State's annual 100 percent Federal E&T grant is its share of the regular 100 percent Federal E&T allocation plus its share of the additional \$20 million (if applicable). Interested pledge States

must submit their requests for additional funding to FNS. FNS will review the requests and, if they are determined reasonable and necessary, will reallocate some or all of the unobligated, unspent ABAWD funds.

(ix) Unlike the funds allocated in accordance with paragraph (d)(1) of this section, the additional pledge funding will not remain available until obligated or expended. Unobligated funds from this grant must be returned to the U.S. Treasury at the end of each fiscal year.

(x) If a participating State agency fails, without good cause, to meet its commitment to make available education, training, and workfare opportunities that permit all its at-risk ABAWDs to remain eligible beyond the 3-month time limit it may be disqualified from participating in the subsequent fiscal year or years.

(4) \* \* \* The Federal government will fund 50 percent of State agency payments for allowable expenses, except that Federal matching for dependent care expenses is limited to the maximum amount specified in paragraph (d)(4)(i) of this section. \* \* \*

\* \* \* \* \*

(j) \* \* \*

(3) \* \* \*

(iii) \* \* \* If the individual reduces his or her work hours to less than 30 a week, but continues to earn weekly wages that exceed the Federal minimum wage multiplied by 30 hours, the individual remains exempt from Program work requirements, in accordance with paragraph (b)(1)(vii) of this section, and the reduction in work effort provision does not apply.

\* \* \* \* \*

Dated: March 12, 2004.

**Eric M. Bost,**

*Under Secretary, Food, Nutrition and Consumer Services.*

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BILLING CODE 3410-30-P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

#### 7 CFR Part 1730

RIN 0572-AB92

#### Electric System Emergency Restoration Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) is proposing to amend its regulations on Electric System Operations and Maintenance to

establish policy requiring 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 man made disaster or other causes. The ERP shall include preventative measures and procedures for emergency recovery from physical and cyber attacks to 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. Both RUS Bulletin 60-7 and RUS Bulletin 1730-1 provided language addressing the security of RUS borrowers' electric systems.

**DATES:** Written comments must be received by RUS or carry a postmark or equivalent no later than May 3, 2004.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: [RUSComments@usda.gov](mailto:RUSComments@usda.gov). Include in the subject line of the message "Electric System Emergency Restoration Plan." The e-mail must identify, in the text of the message, the name of the individual (and name of the entity, if applicable) who is submitting the comment.

- Mail: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U. S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522, Washington, D.C. 20250-1522.

- Hand Delivery/Courier: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5168-S, Washington, D.C. 20250-1522 RUS requires, in hard copy, a signed original and 3 copies of all written comments (7 CFR 1700.4). Comments will be available for public inspection during normal business hours (7 CFR part 1).

**FOR FURTHER INFORMATION CONTACT:** John B. Pavsek, 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.Pavsek@usda.gov](mailto:John.Pavsek@usda.gov).

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This proposed 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 proposed 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 proposed 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 may be initiated.

#### Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications to require preparation of a Federalism Assessment.

#### Regulatory Flexibility Act Certification

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

#### Information Collection and Recordkeeping Requirements

This rule contains no additional information collection or recordkeeping requirements under OMB control

number 0572-0025 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

#### Unfunded Mandates

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

Electric power systems have been identified in Presidential Decision Directive (PDD-63) 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." The United States electric power system consists of the generation of energy and the transmission and distribution of energy (collectively comprising the electric grid). The other critical infrastructures identified in PDD-63 are all dependant to some degree upon the electric power system. 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, economic loss and can affect the national security of the United States.

Such damage or loss can be caused by an act of nature or an act by man, 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 /Hspd-7 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. The Department of Homeland Security's Directorate of Information Analysis and Infrastructure Protection (IAIP) is the lead organization in coordinating the national effort to secure the nation's critical infrastructure. This IAIP function will give state, local, and private entities one primary contact instead of many for coordinating protection activities within the Federal government, including vulnerability assessments, strategic planning efforts, and exercises. RUS and, most importantly, RUS electric borrowers must be diligently proactive in electric infrastructure security.

RUS is uniquely coupled with the electric infrastructure of rural America and its electric borrowers serving rural America. 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 electric borrowers conduct a vulnerability and risk assessment of their respective systems and utilize the results of this assessment to enhance a current ERP or, if none exists, develop and maintain an ERP. Prior to approving any RUS grant, loan or loan guarantee, borrowers will have to demonstrate that they have an ERP.

The vulnerability and risk assessment is utilized to identify assets and infrastructure owned or served by the electric utility, determine the criticality and risk level associated with such assets and infrastructure, identify threats, depict vulnerabilities, if any, review existing mitigation procedures, assist in the development of new and additional mitigation procedures, if necessary, and perform a risk versus cost analysis. 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, employee competency and serve to identify and correct deficiencies in the existing ERP. For the purpose of this regulation, "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 implemented singly by an individual borrower or, as a participant in a multi-party (State, County, utility or combination thereof) tabletop execution or actual implementation of the ERP. For the purpose of this regulation, "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. The Exercise must, at a minimum, verify:

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

#### 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, RUS proposes to amend part 1730 as 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 distribution borrower and power supply borrower 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 on-going operations and

maintenance programs, performing a system security vulnerability and risk assessment, establishing and maintaining an Emergency Restoration Plan (ERP), maintaining records of the physical 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. 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:

- a. Revising paragraph (a) and
- b. Adding to the end of the first sentence in paragraph (c), "or has been determined as a critical component of national security."

The revision reads 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 emergency restoration plan, and maintain adequate records of such inspections and tests. "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 implemented singly by an individual borrower or, as a participant in a multi-party (State, County, utility or combination thereof) Tabletop execution or actual implementation of the ERP. "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.

\* \* \* \* \*

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

##### § 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 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 title;

b. Designating the text as paragraph

(a) and adding a paragraph heading; and

c. Adding a new paragraph (b).

This redesignation and addition are to read as follows:

#### **§ 1730.26 Certification.**

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

(b) *Emergency Restoration Plan certification.* If the self-certification of an ERP and vulnerability and risk assessment are not received prior to completion of the loan approval process, approval of the loan will not be considered until the certifications are received by RUS.

5. Sections 1730.27 and 1730.28 are added to read as follow:

#### **§ 1730.27 Vulnerability and risk assessment.**

(a) Each borrower shall perform an initial and periodic vulnerability and risk assessment of its electric system and maintain adequate records of such assessments.

(b) The borrower vulnerability and risk assessment is to be utilized by the borrower to assist in identifying critical facilities and business operational assets, the exposure of these identified facilities and assets to harm via natural or manmade acts, and methods or methodology to mitigate the exposure to harm.

(c) The vulnerability and risk assessment shall include, but not be limited to, identifying:

(1) Critical assets or infrastructure served by the borrowers' electric system that are identified as elements of national security;

(2) Critical asset components and elements unique to the RUS borrowers system;

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

(4) Threats to facilities and assets identified in paragraphs (c)(1) or (2) of this section; and

(5) Criticality and risk level of the borrowers system.

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

(a) Each borrower shall have a written ERP. The ERP should be developed by the borrower through the borrower's unique knowledge of its system, prudent utility practices and the borrower's completed vulnerability and risk assessment. The ERP shall include, but not be limited to:

(1) A list of key contact emergency 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).

(b) The ERP must be approved and signed by the borrower's manager or chief executive officer and approved by the Board of Directors, as applicable.

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

(d) The ERP shall be Exercised at least annually to ensure operability and employee familiarity.

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

(1) The modified ERP must be prepared in compliance with the provisions of paragraphs (b) and (c) of this section; and

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

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

Dated: March 8, 2004.

**Hilda Gay Legg,**

*Administrator, Rural Utilities Service.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 71**

[Docket FAA-2003-16137; Airspace Docket 03-ANM-07]

#### **Proposed Revision of Class E Airspace; Lexington, OR**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposal would revise the Class E. airspace at Lexington, OR. New Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) makes this proposal necessary. Additional Class E airspace extending upward from 700 feet or more above the surface of the earth is necessary for the safety of IFR aircraft executing the new RNAV GPS SIAPs at Lexington Airport, Lexington, OR.

**DATES:** Comments must be received by May 3, 2004.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket, FAA-2003-16137; Airspace Docket 03-ANM-07, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Northwest Mountain Region, Federal Aviation Administration, Airspace Branch ANM-520, 1601 Lind Avenue, SW., Renton, WA 98055.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory