

Appendix G

Federal Register Notices

G. FEDERAL REGISTER NOTICES

The following *Federal Register* notices were used in the preparation of this Abengoa Biorefinery Project EIS.

Volume and page	Publication date	Title
71 FR 46451	August 14, 2006	Guidelines for the Loan Guarantee Program
73 FR 50001	August 25, 2008	Notice of Intent to Prepare an Environmental Impact Statement and Notice of Wetlands Involvement for the Abengoa Biorefinery Project Near Hugoton, KS
73 FR 73211	December 2, 2008	90-Day Finding on a Petition to List the Black-tailed Prairie Dog as Threatened or Endangered
74 FR 19543	April 29, 2009	Amended Notice of Intent to Modify the Scope of the Environmental Impact Statement for the Abengoa Biorefinery Project near Hugoton, KS

September 14th, please contact Jennifer Graban at (202) 260-1491 or Jennifer.Graban@ed.gov by Friday, September 8, 2006, to reserve time on the agenda. Please include your name, the organization you represent, if appropriate, and a brief description of the issue you would like to present. Presenters will be allowed five minutes to make their comments. Presenters are requested to submit three written copies and an electronic file (CD or diskette) of their comments at the meeting, which should be labeled with their name and contact information. Individuals interested in solely attending the meeting are advised to register in advance to ensure space availability.

Given the expected number of individuals interested in providing comments at the meeting, reservations for presenting comments should be made as soon as possible. Reservations will be processed on a first-come, first-served basis. Persons who are unable to obtain reservations to speak during the meeting are encouraged to submit written comments. Written comments will be accepted at the meeting site or via e-mail at Jennifer.Graban@ed.gov. If you will be emailing written comments, please do so by Friday, September 1, 2006.

The Panel will submit to the President, through the Secretary, a preliminary report not later than January 31, 2007, and a final report not later than February 28, 2008. Both reports shall, at a minimum, contain recommendations, based on the best available scientific evidence.

The meeting site is accessible to individuals with disabilities. Individuals who will need accommodations in order to attend the meeting, such as interpreting services, assistive listening devices, or materials in alternative format, should notify Jennifer Graban at (202) 260-1491 or Jennifer.Graban@ed.gov no later than September 8, 2006. We will attempt to meet requests for accommodations after this date, but cannot guarantee their availability.

Records are kept of all Panel proceedings and are available for public inspection at the staff office for the Panel, from the hours of 9 a.m. to 5 p.m.

Dated: August 9, 2006.

Margaret Spellings,

Secretary, U.S. Department of Education.
[FR Doc. 06-6900 Filed 8-11-06; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Loan Guarantees for Projects That Employ Innovative Technologies; Guidelines for Proposals Submitted in Response to the First Solicitation

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE publishes policy guidelines that DOE intends to use in connection with the first solicitation of proposals for a loan guarantee for Eligible Projects under Title XVII of the Energy Policy Act of 2005 that are expected to contribute to the goals of the President's Advanced Energy Initiative.

EFFECTIVE DATE: The guidelines in this Notice are effective August 14, 2006.

FOR FURTHER INFORMATION CONTACT: Director, DOE Loan Guarantee Program Office, 1000 Independence Avenue, SW., Washington, DC 20585-0121, Phone: 202-586-8336. Email: LGProgram@hq.doe.gov.

With a copy to: Warren Belmar, Deputy General Counsel for Energy Policy, Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

SUPPLEMENTARY INFORMATION:

Introduction

Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511-16514) authorizes the Secretary of Energy, after consultation with the Secretary of the Treasury, to make loan guarantees for projects that "avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued." Commercial technology is defined as a technology in general use in the marketplace. More specifically, Title XVII identifies ten discrete categories of projects that are eligible for a loan guarantee, including those that employ:

1. Renewable energy systems;
2. Advanced fossil energy technology (including coal gasification meeting the criteria in subsection 1703(d));
3. Hydrogen fuel cell technology for residential, industrial, or transportation applications;
4. Advanced nuclear energy facilities;
5. Carbon capture and sequestration practices and technologies, including agricultural and forestry practices that store and sequester carbon;
6. Efficient electrical generation, transmission, and distribution technologies;
7. Efficient end-use energy technologies;

8. Production facilities for fuel efficient vehicles, including hybrid and advanced diesel vehicles;

9. Pollution control equipment; and

10. Refineries, meaning facilities at which crude oil is refined into gasoline. A principal purpose of the Title XVII loan guarantee program is to encourage early commercial use in the United States of new or significantly improved technologies in energy projects. DOE's loan guarantee program is not intended for technologies in research and development. Indeed as section 1702(d) requires a "reasonable prospect of payment" of any loan or debt obligation issued to a project, technologies for project proposals should be mature enough to assure dependable commercial operations and generate sufficient revenues, and not solely a demonstration project (i.e., a project designated to demonstrate feasibility of a technology on any scale). DOE believes that accelerated commercial use of these new or improved technologies will help to sustain economic growth, yield environmental benefits, and produce a more stable and secure energy supply.

Today, DOE begins implementation of Title XVII with two actions. First, DOE publishes guidelines in the nature of a general statement of policy that DOE intends to apply *only* to the first solicitation of projects. Second, DOE makes available the first solicitation for Pre-Applications for Federal Loan Guarantees for Projects that Employ Innovative Energy Technologies by posting it on the internet at: <http://www.LGProgram.energy.gov/>. Neither a procurement action (under Title 48 of the Code of Federal Regulations) nor a financial assistance award (under 10 CFR part 600) is contemplated by these guidelines and the solicitation. As further described in the solicitation, interested parties are being asked to file an initial Pre-Application for review by DOE. If the Pre-Application meets the suggested requirements of these guidelines, DOE may invite the interested party to submit a comprehensive Application.

DOE anticipates receiving a significant volume of interest in the loan guarantee program, and therefore plans to issue multiple solicitations, following adoption of final regulations within the next year, that will cover the broad array of eligible projects under Title XVII. Applicants who respond to the solicitation but are not approved for a loan guarantee may submit a new or revised proposal in response to future solicitations under the final regulations DOE plans to adopt. DOE does not intend to review Pre-Applications or

approve loan guarantees for any proposal that is outside the scope and does not conform with the specific requirements of the initial solicitation. Likewise, only comprehensive applications submitted by interested parties that were invited by DOE to submit a comprehensive application for a Title XVII loan guarantee as a result of the initial solicitation will be considered for a loan guarantee.

While most provisions of today's guidelines are not legally binding, please note that some provisions of these guidelines are based on non-discretionary provisions of law in Title XVII and under the Federal Credit Reform Act of 1990, 2 U.S.C. 661 et seq. ("FCRA"). For example, section 1702(f) of Title XVII specifically limits the term of the loan guarantee by stating that "the term of an obligation shall require full repayment over a period not to exceed the lesser of (i) 30 years or (ii) 90 percent of the projected useful life of the physical asset to be financed by the obligation (as determined by the Secretary)." Hence, Applicants should provide a detailed analysis of the expected and generally accepted life cycle of the primary technology and project facility that is the focus of the financing as DOE cannot issue a guarantee that will extend beyond 90 percent of such life cycle or a 30-year term, whichever is shorter.

Moreover, FCRA requires that Congress must authorize Federal loan guarantees in an appropriations act in advance of the execution of a final binding loan guarantee agreement. *See* 2 U.S.C. 661c(b). This requirement applies even though Title XVII allows for the cost of a loan guarantee, as defined in 2 U.S.C. 661a(5)(C), to be paid by the recipient, *see* 42 U.S.C. 16512(b)(2), and even though today's guidelines provide for a Conditional Commitment that will precede the execution of a final binding Loan Guarantee Agreement. As a result, DOE is currently restricted only to reviewing Pre-Applications and Applications and entering into Conditional Commitments until it obtains the requisite authorization in an appropriations act. DOE may not enter into a binding Loan Guarantee Agreement or issue any loan guarantees until this appropriations authority has been granted.

Discussion of the Guidelines

In this portion of the **SUPPLEMENTARY INFORMATION**, DOE highlights key provisions and, as appropriate, explains the basis for them.

For the first solicitation, these guidelines set forth the type of information that interested parties are

expected to include in a Pre-Application and, if invited by DOE, the type of information that Applicants should additionally include in an Application. Information is also provided in these guidelines as to the determining factors that DOE expects to apply in its review of project proposals. DOE intends to evaluate each Pre-Application and Application taking into consideration, among other things, the requirements and conditions contained in the solicitation, the criteria specified under Title XVII to identify Eligible Projects, the project's ability to optimize the probability of repayment of Guaranteed Obligations, and how the project furthers the goals of the President's Advanced Energy Initiative.¹ Please note that even if a Pre-Application or Application contains all of the information specified in these guidelines, DOE retains the right, in its sole discretion, to inform any Applicant that their project proposal has been denied further review.

The guidelines, in accordance with Section 1702(c), provide that any loan guarantee issued by DOE may not exceed 80 percent of total Project Costs. Section VII of the guidelines generally defines Project Costs as those that are necessary, reasonable, and directly related to the design, construction, and startup of a project. Conversely, excluded costs which are also described with greater specificity in Section VII of the guidelines include initial research and development costs and operating costs after the facility has been constructed.

In addition, DOE notes that the Subsidy Cost of the loan guarantee, as well as fees paid for by the Borrower for the Administrative Cost of Issuing a Loan Guarantee, are excluded from Project Costs. As defined in 2 U.S.C. 661a(5)(C), the Subsidy Cost is not a tangible cost associated with the financing or construction of the project facility. Rather, it constitutes the expected long-term liability to the Federal government in issuing the loan guarantee. In addition, DOE believes that it would be undesirable to allow Borrowers to count the Subsidy Cost (including the financing cost of a Borrower paid Subsidy Cost) as a Project Cost, whether funded by an appropriation or by payment made by

the Borrower. To do so could have the effect of including the Subsidy Cost as an allowable cost under the loan guarantee, and thus put the Federal government at risk for up to 80 percent of its Subsidy Cost requirement. Additionally, the Borrower paid Subsidy Cost can not be paid from the proceeds of Federally guaranteed or funded debt. For similar reasons, fees required under Section 1702(h) of the Act to cover DOE's administrative expenses are also disallowed from Project Costs, thereby ensuring that the loan guarantee does not place the Federal government at risk for up to 80% of these statutorily required fees.

Consistent with section 1702(b), the guidelines specify that DOE must receive either an appropriation for the Subsidy Cost or payment of that cost by the Borrower. No funds have been appropriated for the Subsidy Cost of loan guarantees; therefore DOE anticipates that the project(s) approved pursuant to the first solicitation will require the Borrower to pay this cost. The guidelines specify that a Project Sponsor should include an estimate of the Subsidy Cost in an Application. In accordance with 2 U.S.C. 661b(a), DOE will then perform its own independent calculation of the Subsidy Cost and will consult and obtain the approval of the Office of Management and Budget for this computation prior to entering into any Loan Guarantee Agreement. DOE will also consult with the Secretary of Treasury prior to entering into any Loan Guarantee Agreement. The Applicant will be required to provide updated project financing information and terms and conditions not later than 30 days prior to closing, should any of the terms of the project financing or project terms change between Conditional Commitment and the Loan Guarantee Agreement.

In addition to the Subsidy Cost, section 1702(h) also requires DOE to collect fees to cover the administrative expenses of issuing loan guarantees. The guidelines specify that DOE will collect fees for administrative expenses as provided for in the Conditional Commitment, as well as additional fees during the term of a loan guarantee. These fees will consist of the administrative expenses that DOE incurs during:

- (i) The evaluation of the Pre-Application and Application;
- (ii) The offering, negotiation, and closing of a loan guarantee; and
- (iii) The servicing of the loan guarantee and monitoring the progress of a project.

Title XVII, and section 1702(h) in particular, afford DOE discretion with

¹ One factor that warrants mentioning here is that a proposed project should be constructed and operated in the United States. DOE believes that the environmental benefits and deployment of new and/or enhanced technologies associated with projects should reside within the United States. In such circumstances it will be easier for DOE to monitor the project, ensure repayment of guaranteed debt in accordance with section 1702(d), and enforce its rights in the event of default.

respect to how it imposes fees to cover applicable administrative costs. For this first solicitation, DOE has elected not to impose such fees in connection with the Pre-Application stage. In effect, this means that Project Sponsors who submit Pre-Applications and are denied further consideration will not be charged any fees for expenses incurred by DOE in reviewing their Pre-Application materials. For project proposals that progress to the Application stage, the invitation to submit an Application that DOE will send to Project Sponsors will specify whether DOE is charging an Application fee, and the amount of any such fee. In addition to the Application fee that DOE may assess, the other administrative fees that DOE will collect in connection with the first solicitation will be from Borrowers who enter into a Conditional Commitment, in an amount sufficient to cover DOE's administrative expenses applicable to that Borrower's Pre-Application, Application, Term Sheet, Conditional Commitment, the Loan Guarantee Agreement, and subsequent monitoring and servicing expenses. With respect to future solicitations, DOE may decide to assess a Pre-Application and/or an Application fee. DOE will revisit this issue in the forthcoming regulations that DOE will propose for public comment later this year.

As for the financing structure of proposed projects, Title XVII does not impose any specific limitations, other than the guarantee "shall not exceed an amount equal to 80 percent of the project cost of the facility that is the subject of the guarantee as estimated at the time at which the guarantee is issued." 42 U.S.C. 16512(c). However, section 1702(d)(1) provides: "No guarantee shall be made unless the Secretary determines that there is reasonable prospect of repayment of the principal and interest on the obligation by the borrower." 42 U.S.C. 16512(d)(1). DOE believes this statutory provision requires DOE to make repayment of debt a very high priority of the loan guarantee program and authorizes DOE to adopt policies that ensure that Borrowers and Lenders have a similar motivation and use their best efforts to ensure repayment. Thus, DOE would prefer to limit the financial risk to the Federal government from the first loan guarantees issued under Title XVII as DOE gains valuable experience and expertise with these financial and commercial arrangements. This intention is bolstered by the mandate of Section 1702(g)(2)(B), which requires that "with respect to any property acquired pursuant to a guarantee or

related agreements, [the Secretary] shall be superior to the rights of any other person with respect to the property." This statutory provision requires DOE to possess a first lien priority in the assets of the project and other collateral security pledged. Because DOE is not permitted by Title XVII to adopt a *pari passu* financing structure, any holders of non-guaranteed debt have a subordinate claim to DOE in the event of default, and will not be able to recover on their debt until DOE's claim is paid in full.

To harmonize and balance the twin goals of issuing loan guarantees to encourage early commercial use of new or significantly improved technologies in Eligible Projects while limiting the financial exposure of the Federal government, DOE's first solicitation expresses a preference that DOE not guarantee more than 80 percent of the total face value of any single debt instrument. Under no circumstance does DOE intend to guarantee 100 percent of the loan. Accordingly, if a Borrower seeks a loan guarantee for more than 80 percent of the face value of the underlying debt obligation, DOE's review of the project proposal to determine whether to approve a loan guarantee for such amount will be predicated on the sufficiency of evidence presented by the Borrower in support of a higher guarantee percentage.² DOE notes however, that higher guarantee percentages will lead to higher Subsidy Costs.

For similar reasons of increasing the probability of repayment, in reviewing project proposals, DOE intends to consider whether Project Sponsors will make a significant financial commitment to the project. In addition, DOE intends to consider whether a Project Sponsor will rely upon other government assistance (e.g., financial assistance, tax credits, other loan guarantees) to support financing, construction, or operation of the project. DOE does not intend to disqualify project proposals that employ other forms of Federal and non-Federal government assistance, but in reviewing proposals, DOE will take into account how much equity will be invested and the extent of the financial risk borne by the Project Sponsor.³

² DOE does not have a preference as to whether non-Projects Costs, as defined in Section VII of these guidelines, are financed with debt or equity, as long as DOE maintains a first lien priority in the assets of the project and other collateral pledged as security.

³ Since the guidelines are not substantive regulations, DOE will not reject project proposals solely on the basis of the guidelines. However, Applicants are advised of their heavy burden of

In connection with any loan guaranteed by DOE that may be syndicated, traded, or otherwise sold on the secondary market, DOE will require that the guaranteed portion and non-guaranteed portion of the debt instrument are resold on a pro-rata basis. The guaranteed portion of the debt may not be "stripped" from the non-guaranteed portion, i.e. sold separately as an instrument fully guaranteed by the Federal government.

In further support of DOE's objective to ensure full repayment of debt, DOE expects that participating Lenders will have to meet certain eligibility requirements, as described in greater detail in Section VI of these guidelines. These criteria are intended to ensure that the Lender has the financial wherewithal and appropriate experience and expertise to meet its fiduciary obligations in connection with the debt guaranteed by DOE. DOE expects that the Lender and other appropriate parties will exercise a high level of care and diligence in the establishment and enforcement of the conditions precedent to all loan disbursements and Borrower covenants, as provided for in the loan agreement or related documents, throughout the term of the loan. Moreover, DOE also expects each Lender to diligently perform its duties in the servicing and collection of the loan as well as in ensuring that the collateral package securing the loan remains uncompromised. The Lender will also be expected to provide regular, periodic financial reports on the status and condition of the loan, consistent with the terms of the Loan Guarantee Agreement. The Lender is required to promptly notify DOE if it becomes aware of any problems or irregularities concerning the project or the ability of the Borrower to make payment on the loan or other debt obligations.

In addition to the other measures described above limiting the Federal government's risk exposure, commitments to guarantee loans will not exceed a face value of \$2 billion, in the aggregate, under the first solicitation. Commencing with a loan guarantee program of this size will allow DOE to achieve considerable progress in assisting new or significantly improved energy technologies to market while also enabling DOE to gain valuable experience and expertise that it will incorporate in program regulations and apply to future solicitations. DOE recognizes that some project proposals

justification if they seek to persuade DOE to accept risk in excess of the outer boundaries of what the guidelines indicate to be preferable.

that would otherwise merit full consideration for a loan guarantee under these guidelines will, because of DOE's self-imposed ceiling on loan guarantee commitments, have to await full consideration under future solicitations issued under the final regulations. To accommodate concerns of Project Sponsors whose proposals are deferred full consideration because they either exceed or comprise a substantial amount of the total loan guarantee commitments available under the first solicitation, DOE will consider whether such proposals should be afforded expedited consideration under the final regulations, when adopted.

Finally, please note that the solicitation issued in conjunction with these guidelines addresses many important aspects of the application process, including the relevant period of time during which Pre-Applications for loan guarantees may be filed. Because each project will be unique and each loan guarantee potentially subjects the Federal government to significant financial liability, DOE plans to engage in a rigorous review of a proposed project before determining that it may be eligible for a loan guarantee or subsequently approving and issuing a loan guarantee.

National Environmental Policy Act (NEPA)

Through the issuance of these guidelines DOE is making no decision relative to the approval of a loan guarantee for a particular proposed project. DOE has therefore determined that publication of the policy guidelines is covered under the Categorical Exclusion found at paragraph A.6 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required at this time. However, appropriate NEPA project review will be conducted prior to execution of a Loan Guarantee Agreement.

Review Under the Paperwork Reduction Act

These guidelines provide that Pre-Applications submitted to DOE in response to the solicitation and Applications, if invited by DOE, should contain certain information. This collection of information must be approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.* DOE is requesting emergency

processing of the Paperwork Reduction Act Submission for this collection of information pursuant to 5 CFR 1320.13. DOE is requesting that OMB approve the collection of information prior to the issuance of the solicitation. This emergency collection will be valid for 180 days. Shortly after OMB's approval of the emergency collection, DOE will issue a notice seeking public comment on the information collection and will submit the proposed collection of information to OMB for approval pursuant to 44 U.S.C. 3507(a). An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Issued in Washington, DC, on August 8, 2006.

James T. Campbell,

Acting Chief Financial Officer.

Loan Guarantees for Projects That Employ Innovative Technologies; Guidelines for Proposals Submitted in Response to First Solicitation Under Title XVII of the Energy Policy Act of 2005

I. Purpose

These guidelines set forth goals and procedures that the Department of Energy ("DOE") intends to use for receiving, evaluating, and, after consultation with the Secretary of the Treasury, approving applications for loan guarantees to support Eligible Projects under Title XVII of the Energy Policy Act of 2005.

II. Definitions

As used in these guidelines:

A. "*Act*" means Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511–16514).

B. "*Administrative Cost of Issuing a Loan Guarantee*" means the combined total of all of the administrative expenses that DOE incurs during:

1. The evaluation of a Pre-Application and an Application for a loan guarantee;
2. The offering, negotiation, and closing of a loan guarantee; and
3. The servicing of the loan guarantee and monitoring the progress of a project benefiting from a loan guarantee issued by DOE.

C. "*Payment of the Administrative Cost of Issuing a Loan Guarantee*, which is required to be collected by DOE under section 1702(h) of the Act, is wholly distinct and separate from payment of the Subsidy Cost.

D. "*Applicant*" means any firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company, or governmental

non-Federal entity, that has the authority to enter into, and is seeking, a loan guarantee issued by the Secretary for a loan or other debt obligation of an Eligible Project under the Act.

E. "*Application*" means a written submission in response to a DOE invitation to apply for a loan guarantee that DOE will solicit from Applicant after reviewing and approving a completed Pre-Application, and which should include the items listed in Section III.F. of these guidelines.

F. "*Borrower*" means any project company or entity that enters into a loan or other debt obligation for an Eligible Project.

G. "*Commercial Technology*" means a technology in general use in the commercial marketplace, but does not include a technology solely by use of such technology in a demonstration project funded by DOE.

H. "*Conditional Commitment*" means a Term Sheet offered by DOE and accepted by the Applicant, with the understanding of the parties that the Applicant thereafter satisfies all specified and precedent funding obligations, and all other contractual, statutory, regulatory or other requirements.

I. "*Credit Review Board*" means a board created by DOE in accordance with Office of Management and Budget (OMB) Circular A-129 to oversee the loan guarantee program and approve loan guarantees for individual projects.

J. "*Eligible Project*" means a project located in the United States that meets the applicable requirements of section 1703 of the Act.

K. "*Guaranteed Obligations*" means loans or other debt obligations that the Secretary guarantees under a Loan Guarantee Agreement.

L. "*Holder*" means any individual or legal entity that has lawfully succeeded in due course to all or part of the rights, title, and interest in a Guaranteed Obligation.

M. "*Lender*" or "*Eligible Lender*" means any individual or legal entity, approved by DOE, formed for the purpose of, or engaged in the business of, lending money, including, but not limited to, commercial banks, savings and loan institutions, insurance companies, factoring companies, investment banks, institutional investors, venture capital investment companies, trusts, or other entities designated as trustees or agents acting on behalf of bondholders or other lenders.

N. "*Loan Guarantee Agreement*" means a written agreement that, when entered into by a Borrower, a Lender and the Secretary pursuant to the Act

after satisfaction of the conditions precedent specified in the Conditional Commitment and any other applicable contractual, statutory, and regulatory requirements, establishes the obligation of the Secretary to guarantee payment of principal and interest on specified loans or other debt obligations of a Borrower to the Lender subject to the terms and conditions specified in the Loan Guarantee Agreement. The term "Loan Guarantee Agreement" has the same meaning as a "loan guarantee commitment" (as defined in section 502(4) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)).

N. "*Project Costs*," as described with greater specificity in Section VII of these guidelines, means the estimated sum of the amounts to be expended or accrued by Borrower for costs that are necessary, reasonable, and directly related to the design, construction, and startup of an Eligible Project.

O. "*Project Sponsor*" means any individual, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company or the like that assumes substantial responsibility for the development, financing, and structuring of a project eligible for a loan guarantee and owns or controls the Applicant.

P. "*Pre-Application*" means a written submission in response to a solicitation that broadly describes the project proposal, including the proposed role of a loan guarantee in the project and the eligibility of the project to receive a loan guarantee under the Act, and includes the items listed in Section III.C. of these guidelines.

Q. "*Secretary*" means the Secretary of Energy or designee.

R. "*Subsidy Cost*" has the meaning given the term "cost of a loan guarantee" within the meaning of section 502(5)(C) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(C)). The "Subsidy Cost" represents the net present value, at the time when the guaranteed loan or other debt obligation is disbursed, of the expected liability to the Federal government from issuing the loan guarantee, inclusive of estimated payments to be made by the Federal government, such as default payments, and estimated payments to be made to the Federal government such as recoveries. The Subsidy Cost amount is required by section 1702(b) of the Act to be funded either by an appropriation or by payment by Borrower. Payment of the Subsidy Cost is wholly distinct and separate from payment of the Administrative Cost of Issuing a Loan Guarantee.

S. "*Term Sheet*" means an offering document issued by DOE that specifies the general terms and conditions under which DOE anticipates it may guarantee payment of principal and accrued interest on specified loans or other debt obligations of a Borrower in connection with an Eligible Project. A Term Sheet is not a Loan Guarantee Agreement and imposes no obligation on the Secretary to execute a Loan Guarantee Agreement.

III. Loan Guarantee Application Process

A. In conjunction with these guidelines, DOE is issuing a solicitation announcement to solicit the submission by Project Sponsors of Pre-Applications for loan guarantees for projects that employ innovative technologies. The guidelines will apply to this first solicitation; all future solicitations will be issued pursuant to program regulations that DOE will promulgate at a later time.

B. The solicitation announcement issued in conjunction with these guidelines contains, among other things, the following information:

1. A brief description of the Eligible Projects for which loan guarantee applications are solicited;
2. The place and time for Pre-Application submission;
3. The name and address of the DOE representative whom potential applicants may contact to receive further information and a copy of the solicitation; and
4. The form, format and page limits applicable to the submission of a Pre-Application.

C. In response to the solicitation, interested parties are invited to submit Pre-Applications to DOE. Pre-Applications should meet all requirements specified in the solicitation; DOE does not intend to review or approve loan guarantees for proposals that do not meet the requirements provided for in the solicitation. In addition, the Pre-Application should contain the following information and documentation:

1. A completed Pre-Application form signed by an individual with full authority to bind the Project Sponsor;
2. A business plan including an overview of the proposed project including:

(a) A description of the Project Sponsors, including their experience in project investment, development, construction, operation and maintenance;

(b) A description of the technology to be utilized, including its commercial applications and social uses, the owners or controllers of the intellectual

property incorporated in and utilized by such technology, and its manufacturer(s), and licensees, if any, of the technology authorized to make the technology available in the United States, and whether and how the technology is or will be made available in the United States for further commercial use;

(c) The estimated amount of the total Project Costs (including escalation and contingencies);

(d) The timeframe required for construction and commissioning of the facility; and

(e) A description of the primary off-take or revenue-generating agreement(s) that will primarily provide financial support for the project.

3. A financing plan overview describing the amount of equity to be invested and the sources of such equity, the amount of the total debt obligations to be incurred and the funding sources of all such debt, the anticipated guarantee percentage of the Government-guaranteed debt, and a financial model detailing the investments and the cash flows generated from the project over the project life-cycle;

4. An explanation of what impact the loan guarantee will have on the interest rate, debt term, and overall financing structure for the project;

5. A copy of a commitment letter from an Eligible Lender expressing its commitment to provide the required debt financing necessary to construct and fully commission the project subject to commercially reasonable conditions governing disbursement commonly included in arm's length debt financing arrangements for projects and loan amounts similar to the proposed project;

6. A copy of the equity commitment letter(s) from each of the Project Sponsors and a description of the sources for such equity;

7. An overview of how the project will comply with the eligibility requirements under section 1703 of the Act;

8. An outline of the potential environmental impacts of the project and how these impacts will be mitigated;

9. A description of the anticipated air pollution and greenhouse gas reduction benefits;

10. A description of how the proposed project advances the President's Advanced Energy Initiative; and

11. An executive summary briefly encapsulating the key project features and attributes.

D. In reviewing completed Pre-Applications, DOE intends to utilize the criteria referenced in the Act, the

solicitation, and these guidelines.⁴ In addition, prior to a comprehensive evaluation, an initial review of the Pre-Applications will be performed to determine the following:

1. The proposal is for an Eligible Project; and
2. The submission contains the information requested by the solicitation.

If a Pre-Application fails to meet these requirements, it may be deemed non-responsive and eliminated from further review. As part of the subsequent and more comprehensive Pre-Application review, DOE may conduct an independent review of the financial capability of an Applicant (including personal credit information of the principal(s) if there is insufficient information to assess the financial capability of the organization). In addition, DOE may ask for additional information during the review process and may request one or more meetings with the Project Sponsor(s).

E. After reviewing a completed Pre-Application, DOE will provide a written response to the Project Sponsor.⁵ In this response, DOE will do one of two things. DOE will either invite an Applicant to submit a comprehensive Application for a loan guarantee and specify the amount of the Application fee that DOE has decided to assess, if any, or DOE will advise the Project Sponsor that the project proposal is ineligible for further consideration in the review process under the guidelines. Project Sponsors whose proposals are denied further review will not be barred from re-submitting an updated or revised project proposal in response to future solicitations under the final regulations to be adopted by DOE.

F. In response to an invitation to submit an Application, interested Applicants are expected to meet all requirements specified in the invitation, the solicitation and these guidelines. DOE will be expecting that the information and documentation requested, as well as the substance and content of such documentation required for the Application, will conform substantially with that produced during

the course of an arm's length commercially negotiated project or commercial financing. The maturity, balance sheet and experience of the Project Sponsors, the credit rating of the Lenders and the off-take counterparties, and the scope and breadth of the security package supporting the loan are additional important factors that DOE will consider in its review of an Application.⁶ An Application should include, among other things, the following information and materials:

1. A completed Application form signed by an individual with full authority to bind Applicant;
2. Payment of the Application fee, if any;
3. A detailed description of all material amendments, modifications, and additions made to the information and documentation provided in the Pre-Application, including any changes in the proposed project's financing structure or terms;
4. A description of the nature and scope of the proposed project, including key milestones, location of the project, identification and commercial feasibility of the new or significantly improved technology(ies) to be employed in the project, how Applicant intends to employ such technology(ies) in the project, and how the Applicant or others intend to assure the further commercial availability of the technology(ies) in the United States;
5. A detailed explanation of how the proposed project qualifies as an Eligible Project;
6. A detailed estimate for the total Project Costs (including escalation and contingencies), together with a description of the methodology and assumptions used;
7. An estimate of the amount of the Subsidy Cost for the project, including a description of the methodology used for this calculation and any supporting documentation;
8. A detailed description of the construction contractor(s) and equipment supplier(s), construction schedules for the project including major activity and cost milestones as well as the performance guarantees, performance bonds, liquidated damages provisions, and equipment warranties to be provided;
9. A detailed description of the operations and maintenance provider(s), the plant operating plan, estimated staffing requirements, parts inventory, major maintenance schedule, estimated annual downtime, and performance

guarantees and related liquidated damage provisions, if any;

10. A description of the management plan of operations that Applicant will employ in carrying out the project, and information concerning the management experience of each officer or key person associated with the project;

11. A detailed description of the project decommissioning, deconstruction and disposal plan and the anticipated costs associated therewith;

12. An analysis of the market for the product(s) to be produced by the project, including relevant economics justifying the analysis, and copies of any contractual agreements for the sale of these products or assurance of the revenues to be generated from sale of these products;

13. A detailed description of the overall financial plan for the proposed project, including all sources of funding, equity, and debt, and the liability of parties associated with the project over the lifetime of the requested loan guarantee;

14. A copy of all loan documents that Borrower and Lender will sign if the Application for a loan guarantee is approved, containing all of the terms and conditions of the loan or other debt obligations to be guaranteed, including the proposed amount of the loan, interest charges, repayment position, principal repayment schedule, fees, prepayment and late payment penalties, and cure rights;

15. A copy of all material agreements, whether entered into or proposed, relevant to the investment, construction and commissioning of the project;

16. A copy of the financial closing checklist for the equity and debt;

17. Applicant's business plan on which the project is based and project pro forma statements for the proposed life of the loan guarantee, including income statements, balance sheets, and cash flows. All such statements should include assumptions made in their preparation and the range of revenue, operating cost, and credit assumptions considered;

18. Financial statements for the past three (3) years that have been audited by an independent certified public accountant, including all associated notes, as well as interim financial statements and notes for the current fiscal year, of Applicant and parties relevant to Applicant's financial backing, together with business and financial interests of principal organizations, if appropriate, such as parent and subsidiary corporations or partners of Applicant;

⁴ While these factors are designed for review of Pre-Applications, DOE intends to use these factors, as appropriate, in reviewing Applications as well.

⁵ While DOE intends to review Applicant's written submission, neither the Pre-Application nor any written or other feedback that DOE may provide in response to the Pre-Application is intended to obviate the need for an Application. In addition, any response that DOE may provide to a Pre-Application or subsequent Application does not obligate DOE to issue a loan guarantee for a project; only a duly executed Loan Guarantee Agreement may contractually obligate DOE to guarantee any loan or other debt obligations.

⁶ Additional factors that DOE expects to consider when reviewing Applications are described in Section IV of these guidelines.

19. A copy of all legal opinions, engineering reports, and other material reports, analysis, and reviews related to the project;

20. Credit history of Applicant and, if appropriate, any party who owns or controls a five percent or greater interest in the project or the Applicant;

21. A preliminary credit assessment for the project without a loan guarantee from a nationally recognized rating agency;

22. A list of all project-related applications filed and approvals issued by Federal, state, and local government agencies for permits and authorizations to site, construct, and operate the project. If still outstanding, the Application should contain an estimated date of completion for any required filings and approvals;

23. A report containing an analysis of the potential environmental impacts of the project that will enable DOE to assess whether the project will comply with all applicable environmental requirements and how and to what measurable extent the project avoids, reduces, or sequesters air pollutants or anthropogenic emissions of greenhouse gases, including how Borrower intends to verify those benefits;

24. A listing of assets associated, or to be associated, with the project and any other asset that will serve as collateral for the guaranteed loan and assure repayment of the loans and other debt obligations of the project, including appropriate data as to the value and useful life of any physical assets and a description of any other associated security and its value. With respect to any ownership interest in a real property asset described above or any pledged asset that is not part of the project, an appraisal should be performed by state licensed or certified appraisers that is consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation;

25. An analysis demonstrating that at the time of the Application, there is a reasonable prospect that Borrower will be able to repay the loan or other debt obligation to be guaranteed (including interest) according to its terms, and a complete description of the operational and financial assumptions on which this demonstration is based;

26. Written affirmation from an officer of the Lender confirming that Lender is an Eligible Lender in good standing with DOE's and other agencies' loan guarantee programs; and

27. Such other information requested in the solicitation or invitation to submit an Application necessary for a

complete assessment of the loan guarantee application for the project.

G. Following Applicant's submission of an Application, DOE will review the Application based on the factors mentioned in subsection F of Section III and Section IV of the guidelines. If the Credit Review Board determines that a project may be suitable for a loan guarantee, because, among other things, it qualifies as an Eligible Project, there exists a reasonable expectation of payment based on the materials provided in the Application, and the proposed project will advance the President's Advanced Energy Initiative, DOE may notify the Borrower and Lender in writing and provide them with a copy of a proposed Term Sheet. In the event that DOE reviews an Application and decides not to proceed further with the issuance of a proposed Term Sheet, DOE will inform Applicant in writing the reason(s) for the denial.

H. Concurrent with the review process described above, DOE will consult with the U.S. Department of Treasury regarding the terms and conditions of the potential loan guarantee and will work with OMB to determine the Subsidy Cost for a potential loan guarantee based on the particular set of terms and conditions associated with the project. OMB will ultimately review and approve the final determination of the Subsidy Cost.

I. Subsequent to any negotiations and revisions of the proposed Term Sheet including the Subsidy Cost in accordance with subsection H of Section III of the guidelines, the Term Sheet becomes a Conditional Commitment if, and only if, both DOE and Applicant agree to the proposed terms and conditions and sign the Term Sheet. Among other things, the Conditional Commitment will specify the required payment of fees for the Administrative Cost of Issuing a Loan Guarantee. Subsequent to entering into a Conditional Commitment, and upon agreement as to the detailed terms and conditions to be contained in the Loan Guarantee Agreement and other related documents, as well as availability of authority provided in an appropriations act for the loan guarantee, and fulfillment of other applicable statutory, regulatory, or other requirements, the Credit Review Board will set a closing date. DOE will enter into a Loan Guarantee Agreement with an Applicant that satisfies the specified conditions precedent if and only if all funding and other contractual, statutory and regulatory requirements have been satisfied.

J. Prior to the closing date, the Secretary will ensure that:

1. Pursuant to section 1702(b) of the Act, Congress has made an appropriation for the Subsidy Cost of the loan guarantee, or that the Secretary will receive payment in full from the Borrower as part of the closing and Congress has provided sufficient additional authority in an appropriations act;

2. Pursuant to section 1702(h) of the Act, and in accordance with Section V.R. of these guidelines, the Secretary has received from Borrower payment of a fee for DOE's Administrative Cost of Issuing a Loan Guarantee or will receive payment of the fee as part of the closing;

3. The Director of OMB has reviewed and approved DOE's calculation of the Subsidy Cost of the loan guarantee;

4. The Secretary of the Treasury has been consulted as to the terms and conditions of the Loan Guarantee Agreement;

5. The Loan Guarantee Agreement and related documents contain all terms and conditions the Secretary deems reasonable and necessary to protect the interests of the United States; and

6. All conditions precedent specified in the Conditional Commitment have either been satisfied or waived by the Secretary and all other applicable contractual, statutory, and regulatory requirements have been satisfied.

IV. Evaluation of Applications

In evaluating Applications invited for submission, DOE plans to consider the following factors:⁷

A. Whether the Application is complete, signed by the appropriate entity or entities with the authority to bind the Project Sponsor and other relevant parties to the agreement, and complies with the eligibility requirements stated in the Act, these guidelines, and the solicitation;

B. Whether the Application contains sufficient information, including a detailed description of the nature and scope of the project and the nature, scope, and risk coverage of the loan guarantee sought, to enable DOE to perform a thorough assessment of the project;

C. Whether and to what measurable extent the project avoids, reduces, or sequesters air pollutants or anthropogenic emissions of greenhouse gases;

D. Whether the new or significantly improved technology to be employed in the project, as compared to commercial technologies in service in the United States at the time the guarantee is

⁷ While these factors are designed for review of Applications, DOE intends to use these factors, as appropriate, in reviewing Pre-Applications as well.

issued, is ready to be employed commercially in the United States, can yield a commercially viable product(s) in the use proposed in the project, and is or will be available for further commercial use in the United States;

E. Whether the project will advance the goals of the President's Advanced Energy Initiative;

F. Whether the requested amount of the loan guarantee is reasonable relative to the nature and scope of the project;

G. The extent to which Project Costs are funded by guaranteed debt;

H. The extent to which Applicant and other principals involved in the project have made a significant equity commitment to the project;

I. Whether the project will be ready for full deployment and operations in the proximate future;

J. Whether there is sufficient evidence that Applicant will initiate and complete the project in a timely, efficient, and acceptable manner;

K. Whether and/or to what extent Applicant will rely upon other Federal and non-Federal governmental assistance (grants, tax credits, other loan guarantees, etc.) to support the financing and construction and/or operation of the project;

L. Whether there is reasonable assurance that the project is economically feasible and will produce sufficient revenues to service the project's debt obligations over the life of the loan guarantee and assure timely repayment of guaranteed loans and other debt obligations;

M. Whether the collateral, warranties, and other assurance of repayment described in the Application provide adequate safeguard to the Federal government in the event of default;

N. Whether Applicant possesses the capacity and expertise to successfully operate the project, based on factors such as financial soundness, management organization, and the nature and extent of corporate and personnel experience;

O. Whether the project will comply with all applicable laws and regulations, including all applicable environmental statutes and regulations;

P. Whether the levels of market, regulatory, legal, financial, technological, and other risks associated with the project are appropriate for a loan guarantee provided by DOE;

Q. Whether the entity issuing the loan or other debt obligation subject to the loan guarantee is an Eligible Lender; and

R. Such other criteria that the Secretary and the Credit Review Board deem relevant in evaluating the merits of an Application.

V. Findings by the Secretary

Prior to the issuance by DOE of a loan guarantee, the Secretary should ensure that Applicant satisfies the following requirements and conditions (some or all of which should be specified in the Loan Guarantee Agreement):

A. The project qualifies as an Eligible Project under the Act;

B. The project will be constructed and operated in the United States and the technology is or is likely to be available in the United States for further commercial application;

C. The debt guaranteed by DOE is limited to no more than 80 percent of total Project Costs;

D. The amount of the loan guarantee does not exceed 80 percent of the total face value of the loan or other debt obligation of the project, or provides sufficient evidence to support a guarantee exceeding 80 percent (but in no event 100 percent);

E. Applicant and other principals involved in the project have made a significant equity investment;

F. The prospective Borrower is obligated to make full repayment of the guaranteed loan over a period of up to the lesser of 30 years or 90 percent of the projected useful life of the project's major physical assets, as calculated in accordance with generally accepted accounting principles and practices;

G. The loan guarantee does not finance, either directly or indirectly, a Federally tax-exempt obligation. Accordingly, the loan guarantee may not be used for a Federally tax-exempt obligation or serve as collateral to secure a tax-exempt obligation;

H. The guaranteed portion of a loan must not be separated from or "stripped" from the non-guaranteed portion of the loan and resold in the secondary debt market;

I. The amount of the loan guaranteed, when combined with other funds committed to the project, will be sufficient to carry out the project, including adequate contingency funds;

J. There is a reasonable prospect of repayment by Borrower of the principal and interest of the Guaranteed Obligations;

K. The prospective Borrower has pledged project assets and other collateral or surety, including non project-related assets, as determined by the Secretary to be necessary as assurance for the repayment of the loan;

L. The Loan Guarantee Agreement and related documents include detailed terms and conditions as appropriate to protect the interests of the United States in the case of default, including ensuring availability of all the

intellectual property rights, technical data including software, and physical assets necessary for any person selected, including, but not limited to, the Secretary, to complete and operate the defaulting project;

M. The Borrower's interest rate on the guaranteed loan is determined by the Secretary to be reasonable, taking into account the range of interest rates prevailing in the private sector for similar Federal government guaranteed obligations of comparable risk;

N. The guaranteed loan is not subordinate to any loan or other debt obligation for the project not part of the Guaranteed Obligations and is in a first lien position regarding all assets of the project and all collateral security pledged;

O. There is satisfactory evidence that Borrower is willing, competent, and capable of performing the terms and conditions of the loan or other debt obligation and the loan guarantee;

P. The Lender is not a Federal entity, possesses sufficient financial wherewithal and expertise, and will exercise the requisite standard of care as deemed necessary by the Secretary and stated in DOE's lender eligibility criteria in Section VI of these guidelines;

Q. Lender or other parties servicing the loan and monitoring the project should be satisfactory to the Secretary. In addition, the Secretary will need to find that the Lender and other appropriate parties will exercise a high level of care and diligence in the establishment and enforcement of the conditions precedent to all loan disbursements and the Borrower covenants throughout the term of the loan and that each Lender will be required to diligently perform its duties in the servicing and collection of the loan as well as in ensuring that the collateral package securing the loan remains uncompromised. The Lender will also provide annual or more frequent periodic financial reports on the status and condition of the loan, and is required to promptly notify DOE if it becomes aware of any problems or irregularities concerning the project or the ability of the Borrower to make payment on the loan or other debt obligations. Even though DOE will rely on Lender (or other servicer) to service and monitor the loan with utmost care and expertise, Lender's responsibilities with regard to the loan are separate from DOE's own monitoring and review of the loan and the project;

R. As specified in the Conditional Commitment, the prospective Borrower makes payment of the fee for the Administrative Cost of Issuing a Loan Guarantee pursuant to section 1702(h)

of the Act. While covering the other costs included in the Administrative Cost of Issuing a Loan Guarantee, this payment will not include the servicing and monitoring costs identified in Section II.B. of these guidelines. These latter costs will be assessed in accordance with the Loan Guarantee Agreement which will require payment of administrative fees to the Federal government by Borrower, either directly or through the Lender, periodically thereafter for the duration of the loan guarantee. DOE intends to use all of the fees mentioned above to defray administrative expenses associated with issuing and monitoring loan guarantees;

S. If Borrower is to make payment in full for the Subsidy Cost of the loan guarantee pursuant to section 1702(b)(2) of the Act, such payment must be received by the Secretary prior to, or at the time of, closing;

T. DOE representatives have access to the project site at all reasonable times in order to monitor the performance of the project;

U. DOE and Borrower have reached an agreement as to what project information will be made available to DOE and which project information will be made publicly available;

V. The prospective Borrower has filed applications for or obtained any required regulatory approvals for the project and is in compliance with all Federal and state regulatory requirements;

W. Applicant has no delinquent Federal debt, including tax liabilities, unless the delinquency has been resolved with the appropriate Federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996; and

X. The Loan Guarantee Agreement contains such other terms and conditions as the Secretary deems reasonable and necessary to protect the interests of the United States.

VI. Lender Eligibility

Lenders associated with a project should meet the following requirements:

A. The Lender is a "non-Federal qualified institutional buyer," as defined in 17 CFR 230.144A(a), including qualified retirement plans and governmental plans;

B. The Lender is not a party debarred or suspended from participation in a Federal government contract (under 48 CFR 9.4) or participation in a non-procurement activity (under a set of uniform regulations implemented in agency regulations for numerous agencies, including DOE, at 10 CFR 1036);

C. The Lender is not delinquent on any Federal debt or loan;

D. The Lender is duly organized and legally authorized to enter into the transaction;

E. The Lender is able to demonstrate experience in originating and servicing loans for commercial deals similar in size and scope with the project under consideration; and

F. The Lender is able to demonstrate experience or capability as the lead lender or underwriter of other energy related projects.

VII. Project Costs

A. In conjunction with the Secretary's determination of the Project Costs associated with the issuance of a loan guarantee, Applicant should record such costs in accordance with generally accepted accounting principles and practices. Applicant should calculate the sum of reasonable and customary costs that it has paid and expects to pay, and which are directly related to the project, to estimate the total sum of Project Costs. Project Costs may include, but are not limited to:

1. Costs of acquisition, lease or rental of real property, including engineering fees, surveys, title insurance, recording fees, and legal fees incurred in connection with land acquisition, lease or rental, site improvements, site restoration, access roads, and fencing;

2. Engineering, architectural, legal and bond fees, and insurance paid in connection with construction of the facility; and materials, labor, services, travel and transportation for facility construction, startup, and tests;

3. Equipment purchase and startup testing;

4. Costs to provide equipment, facilities, and services related to safety and environmental protection;

5. Financial and legal services costs, including other professional services and fees necessary to obtain required licenses and permits and to prepare environmental reports and data;

6. Interest costs and other normal charges affixed by lenders;

7. Necessary and appropriate insurance and bonds of all types;

8. Costs of startup, commissioning and shakedown;

9. Costs of obtaining licenses to intellectual property necessary to design, construct, and operate the project; and

10. Other necessary and reasonable costs approved by the Secretary.

B. Applicant should not record the following costs as Project Costs associated with the loan guarantee:

1. Fees and commissions charged to Borrower, including finder fees, for obtaining Federal funds;

2. Parent corporation's general and administrative expenses, and non-project related parent corporation assessments, including organizational expenses;

3. Goodwill, franchise, trade, or brand name costs;

4. Dividends and profit sharing to stockholders, employees, and officers;

5. Research, development, and demonstration costs of readying the energy technology for employment in a commercial project;

6. Costs that are excessive or are not directly required to carry out the project, as determined by the Secretary;

7. Administrative Cost of Issuing a Loan Guarantee paid by the Borrower;

8. The Subsidy Cost of the loan guarantee; and

9. Operating expenses incurred after startup, commissioning and shakedown.

VIII. Principal and Interest Assistance Contract

With respect to any Guaranteed Obligation, the Secretary may enter into a contract to pay Holders, for and on behalf of Borrower, from funds appropriated for that purpose, the principal and interest charges that become due and payable on the unpaid balance of the Guaranteed Obligation, if the Secretary finds that:

A. Borrower is unable to meet the payments and is not in default;

B. Borrower will, and is financially able to, continue to make the scheduled payments on the remaining portion of the principal and interest due under the non-guaranteed portion of the debt obligation, or an arrangement, approved by the Secretary, has otherwise been agreed to avoid an impending payment default;

C. It is in the public interest to permit Borrower to continue to pursue the purposes of the project;

D. In paying the principal and interest, the Federal government expects a probable net benefit greater than it would receive in the event of a default;

E. The payment authorized is no greater than the amount of principal and interest that Borrower is obligated to pay under the agreement being guaranteed; and

F. Borrower agrees to reimburse the Secretary for the payment (including interest) on terms and conditions that are satisfactory to the Secretary and executes all written contracts required by the Secretary for such purpose.

IX. Full Faith and Credit

As specified in the Act, the United States pledges its full faith and credit to the payment of all Guaranteed Obligations with respect to principal

and interest under the terms and conditions of the Loan Guarantee Agreement.

X. Default/Audit

As required by sections 1702(g)(1)(A) and 1702(i)(1) of the Act, DOE in the near future will issue regulations pertaining to default and audit requirements that will apply to any loan guarantee issued, and Loan Agreement executed, by DOE.

[FR Doc. E6-13268 Filed 8-11-06; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket ID: ERRE-BT-2006-WAV-0140]

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver of Peerless Boilers Heat, LLC From the Department of Energy Residential Furnace and Boiler Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Petition for Waiver and request for comments.

SUMMARY: Today's notice publishes a Petition for Waiver from Peerless Boilers Heat, LLC (PB). This petition (hereafter "PB Petition") request a waiver from the Department of Energy's (hereafter "Department" or "DOE") test procedures for residential furnaces and boilers. Today's notice also includes an alternate test procedure PB has requested DOE to include in the Decision and Order, should the Department grant PB a waiver. The Department is soliciting comments, data, and information with respect to the PB Petition and the proposed alternate test procedure.

DATES: The Department will accept comments, data, and information regarding this Petition for Waiver until, but no later than September 13, 2006.

ADDRESSES: Please submit comments, identified by Docket ID number: EERE-BT-2006-WAV-0140, by any of the following methods:

- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE-2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed original paper copy.

- *Hand Deliver/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Room 1J-018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121.

- *E-mail:* PBPetition@ee.doe.gov. Include either the Docket ID number: EERE-BT-2006-WAV-0140, and/or "PB Petition" in the subject line of the message.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in Microsoft Word, WordPerfect, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. Absent an electronic signature, comments should electronically must be followed and authenticated by submitting the signed original paper document. The Department does not accept telefacsimiles (faxes). Any person submitting written comments must also send a copy of such comments to the petitioner. (10 CFR 430.27(b)(1)(iv)). The contact information for the petitioner in today's notice is: Mr. Jeffrey K. Alexander, Vice President, PB Heat, LLC, 9th & Rothermel Drive, P.O. Box 447, New Berlinville, PA 19545-0477.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. The Department will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to read the background comments relevant to this matter, go to the U.S. Department of Energy, Forrestal Building, Room 1J-018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: This notice, public comments received, the PB Petition, and prior Department rulemakings regarding residential furnace and boilers. Please

call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT:

Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mail Stop EE-2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9611; E-mail: Mohammed.Khan@ee.doe.gov; or Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC-72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-9507; E-mail: Thomas.DePriest@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Background and Authority
- II. Petition for Waiver
- III. Alternate Test Procedure
- IV. Summary and Request for Comments

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III (42 U.S.C. 6291-6309) provides for the "Energy Conservation Program for Consumer Products other than Automobiles." It specifically provides for definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. With respect to test procedures, Part B generally authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) EPCA provides that the Secretary of Energy may amend test procedures for consumer products if the Secretary determines that amended test procedures would more accurately reflect energy efficiency, energy use and estimated operating costs, and that they are not unduly burdensome to conduct. (42 U.S.C. 6293(b))

Today's notice involves residential products covered under Part B. The PB Petition requests a waiver from the residential furnace and boiler test procedures for PB's PO-50, PO-60, PO-63 and PO-73 models of oil-fired boilers. The test procedures for residential furnaces and boilers appear at 10 CFR Part 430, Subpart B, Appendix N.

The Department's regulations contain provisions allowing a person to seek a

information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4041, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0144, Payment by Electronic Funds Transfer, in all correspondence.

Dated: August 15, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8-19669 Filed 8-22-08; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement and Notice of Wetlands Involvement for the Abengoa Biorefinery Project Near Hugoton, KS (DOE/EIS 0407)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of intent to prepare an environmental impact statement, conduct a public scoping meeting, and opportunity for public comment; Notice of Wetlands Involvement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality NEPA regulations (40 Code of Federal Regulations [CFR] Parts 1500-1508), and the DOE NEPA regulations (10 CFR Part 1021) to assess the potential environmental impacts of a project proposed by Abengoa Bioenergy Biomass of Kansas, LLC (ABBK), to construct and operate a biomass-to-ethanol and energy facility near Hugoton, Kansas (hereinafter termed "Abengoa Biorefinery Project" or the "Project"). DOE's proposed action is to provide cost-share Federal funding to ABBK to construct and operate the Project. DOE is issuing this Notice of Intent to inform the public about the proposed action; announce plans to conduct a public scoping meeting; invite public participation in the scoping process; and solicit public comments for consideration in establishing the scope of the EIS, including the range of reasonable alternatives and the potential environmental impacts to be analyzed.

DATES: The public scoping period begins on August 25, 2008, and will continue through October 9, 2008. DOE will consider all comments received or

postmarked by October 9, 2008, in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable. A public scoping meeting will be held in Memorial Hall at the Stevens County Courthouse, Hugoton, Kansas, on September 10, 2008 from 6 p.m. to 8 p.m. Written and oral comments will be given equal weight.

ADDRESSES: Written comments on the scope of the EIS should be directed to Kristin Kerwin at the U.S. Department of Energy Golden Field Office, 1617 Cole Boulevard, Golden, Colorado 80401. You may also contact Ms. Kerwin by telephone at 303-275-4968, facsimile at 303-275-4790, or e-mail: kristin.kerwin@go.doe.gov. Envelopes and the subject line of e-mails should be labeled "Abengoa EIS Scoping Comments."

The public scoping meeting will be held on September 10, 2008 from 6 p.m. to 8 p.m. at the following location: Memorial Hall, Stevens County Courthouse, 200 East 6th St., Hugoton, Kansas 67951-2606.

FOR FURTHER INFORMATION CONTACT: For information on the proposed project, information on how to comment, or to receive a copy of the draft EIS when it is issued, contact Kristin Kerwin by any of the means described in the **ADDRESSES** section above.

For further information on the DOE Office of Energy Efficiency and Renewable Energy Integrated Biorefinery Program, contact Jacques Beaudry-Losique, Biomass Program Manager, U.S. Department of Energy, 1000 Independence Avenue, SW., EE-2E, 5H-021, Washington, DC 20585, telephone: 202-586-5188, facsimile: 202-586-1640, e-mail: eere_biomass@ee.doe.gov.

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC-20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0103; e-mail: AskNEPA@hq.doe.gov; telephone: 202-586-4600; leave a message at 1-800-472-2756; or facsimile: 202-586-7031.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action: The Energy Policy Act of 2005 (EPA 2005), Section 932, directs the Secretary of Energy to conduct a program of research, development, demonstration, and commercial application for bioenergy, including, integrated biorefineries that may produce biopower, biofuels, and bioproducts. Section 932 provides that

"the goals of the biofuels and bioproducts programs shall be to develop, in partnership with industry and institutes of higher education—

(1) Advanced biochemical and thermochemical conversion technologies capable of making fuels from lignocellulosic feedstocks that are price-competitive with gasoline or diesel in either internal combustion engines or fuel cell-powered vehicles;

(2) Advanced biotechnology processes capable of making biofuels and bioproducts with emphasis on development of biorefinery technologies using enzyme-based processing systems;

(3) Advanced biotechnology processes capable of increasing energy production from lignocellulosic feedstocks, with emphasis on reducing the dependence of industry on fossil fuels in manufacturing facilities; and

(4) Other advanced processes that will enable the development of cost-effective bioproducts, including biofuels."

Section 932(d) provides that "the Secretary shall carry out a program to demonstrate the commercial application of integrated biorefineries. The Secretary shall ensure geographical distribution of biorefinery demonstration under this subsection. The Secretary shall not provide more than \$100,000,000 under this subsection for any single biorefinery demonstration. In making awards under this subsection, the Secretary shall encourage—

(A) The demonstration of a wide variety of lignocellulosic feedstocks;

(B) The commercial application of biomass technologies for a variety of uses, including—

- i. Liquid transportation fuels;
- ii. High-value biobased chemicals;
- iii. Substitutes for petroleum-based feedstocks and products; and
- iv. Energy in the form of electricity or useful heat; and

(C) The demonstration of the collection of treatment of a variety of biomass feedstocks."

Section 932(d) further directs the Secretary to solicit proposals for demonstration of advanced biorefineries and to select only proposals that demonstrate economic viability without Federal subsidy after initial construction costs are paid and for projects that are replicable.

In implementing section 932, DOE's goal is to demonstrate that commercial-scale integrated biorefineries that use a wide variety of lignocellulosic feedstocks (biomass), can operate profitably once constructed, and can be replicated. Lignocellulosic feedstock includes energy crops, corn fiber, wood wastes, agricultural wastes such as corn

stover, and certain municipal solid wastes. DOE notes that, while the refining process for ethanol from biomass is more complex than the refining process for ethanol derived from grain, cellulosic ethanol can yield a greater net energy benefit and result in lower greenhouse gas emissions.

Accordingly, DOE issued a funding opportunity announcement for the construction and operation of commercial-scale integrated biorefineries intended to demonstrate the use of a wide variety of cellulosic feedstocks. On February 28, 2007, DOE announced the selection of six biorefinery projects for negotiation of financial assistance awards. In that announcement, DOE proposes to invest up to \$385 million in the six projects over the next four years.

Abengoa Bioenergy Biomass of Kansas, LLC (ABBK) of Chesterfield, Missouri, was one of the six applicants competitively selected for negotiation of award under DOE's funding opportunity announcement. Abengoa proposed an innovative approach to biorefinery operations that involves production of a biofuel and of energy in the form of steam that can be used to meet energy needs and displace fossil fuels such as coal and natural gas. In addition, siting the facility in Kansas would qualify Abengoa for state tax credits for biofuels, which would make the biorefinery a more viable commercial operation.

DOE granted an initial award to ABBK to advance the conceptual design; to initiate the permitting process; and to support an environmental review under NEPA for ABBK's proposed biomass-to-ethanol-and-energy facility near Hugoton, KS. DOE requires that ABBK fulfill these design, permitting, and environmental review obligations prior to deciding whether to cofund the construction and operation phase of the project. The total anticipated cost of this initial work is \$37.5 million of which DOE is funding 40% (\$15 million) and ABBK is providing 60% (\$22.5 million).

As described below, DOE is now proposing to negotiate a second financial assistance agreement for approximately \$61 million for the construction and operation of the biomass to ethanol facility, whose anticipated total cost is approximately \$190.5 million.

ABBK is also planning to construct and operate a traditional grain-to-ethanol production facility at the same site that would integrate the biomass-to-ethanol facility into the overall facility. This grain-to-ethanol facility would use a traditional starch conversion process to produce ethanol from grain

feedstocks (sorghum or corn) along with distillers grains with solubles, which is a product. While the traditional grain-to-ethanol facility would be constructed and operated with private funds, DOE plans to analyze the traditional grain-to-ethanol facility as a connected action in the EIS.

Proposed Action: DOE is proposing to provide approximately \$61 million in Federal funding to ABBK for the construction and operation of a commercial-scale biomass-to-ethanol and energy facility near Hugoton, KS. The total estimated cost (beyond the initial award) for construction and operation of the biomass-to-ethanol portion of the project is approximately \$190.5 million.

The biomass-to-ethanol facility would process 400 dry metric tons per day of biomass to produce approximately 12 million gallons per year (MGPY) of denatured ethanol. The biomass-to-ethanol facility would utilize an enzymatic hydrolysis process for converting biomass feedstocks to ethanol and co-products, and a gasification technology to convert biomass to synthesis gas. Biomass feedstock would be supplied from waste products from the production of crops produced within a 30 mile radius of the facility, and may include sorghum stubble, corn stover, switchgrass, and other opportunity feedstocks that are available in the area.

The traditional grain-to-ethanol process would use 32 million bushels of grain (sorghum and corn) to produce approximately 88 MGPY of denatured ethanol annually, two-thirds of which (i.e. that derived from sorghum) would qualify as *Advanced Biofuels* under Section 207 of the Energy Independence and Security Act of 2007 (EISA) (Per EISA, *Advanced Biofuels* includes all biofuels except corn-based ethanol). Solids from the process will be converted to animal feed, resulting in the production of up to 781,800 tons per year wet distillers grain with solubles (WDGS). The facility will have the capability to dry up to 50 percent of the WDGS, producing a maximum of 152,000 tons per year of dried distiller's grains with solubles (DDGS). The difference between the two sources of animal feed is moisture; DDGS contains approximately 10 percent moisture while WDGS contains approximately 65 percent moisture.

The overall integrated biorefinery, comprising both the proposed biomass-to-ethanol facility and the grain-to-ethanol facility, would be capable of producing about 100 MGPY of denatured ethanol and would be located on approximately 800 acres, which

includes the combined facility footprint of about 385 acres and a buffer area between the proposed biorefinery and the City of Hugoton to the east. Hugoton has a population of about 3,700 and is located in Stevens County in southwest KS. Land use in the area is primarily agricultural in nature with cropland being the dominant use and grassland being the secondary use. The area has diverse biomass feedstocks, numerous large cattle feedlots, and a variety of grains grown locally.

The project site itself currently consists of row-cropped agricultural land and is adjoined by grain elevators, an asphalt plant, industrial park, and airport to the south; golf course and agricultural land to the west; two residences to the northwest; and agricultural cropland to the north. About 65 % of the site would qualify as prime farmland if it were irrigated. The proposed biorefinery site and additional buffer area to the east are currently zoned Agricultural, but the biorefinery location is proposed for a change to Heavy Industrial zoning.

Infrastructure required to operate the proposed biorefinery would include the following:

- Water, which would be supplied from wells on-site and near the project site utilizing water rights acquired from local owners;
- Electricity, which would be brought to the project site by Pioneer Electric from an existing substation located a few miles to the north of the project site;
- Natural gas, which would be brought through a lateral connection to one of the nearby interstate pipelines or through the local distribution company;
- Wastewater treatment—wastewater would be treated on-site, non-contact cooling water will be used for irrigation;
- Railroad service would be provided by the Cimarron Valley Short Line which runs adjacent to the project site; and
- Road access would be via a truck bypass route that the City of Hugoton intends to construct prior to the completion of the project.

During construction, truck traffic to the site would be expected to average about 30 shipments a day. During operations, truck traffic would be expected to increase to about 470 shipments a day. Most of the grain and biomass would be obtained from growers located near the proposed facility, but about 8 million tons of grain would be shipped to the facility from non-local sources each year.

Alternatives: NEPA requires that agencies evaluate reasonable alternatives to the proposed action in an EIS. To implement the requirements of

EPA Act 2005, Section 932(d), in a separate, earlier proceeding DOE conducted a competitive solicitation. DOE received 24 applications in the response to the solicitation. Of these, nine did not comply with statutory requirements for eligibility under Section 932. DOE reviewed the remaining 15 applications on their merits and, having considered the objectives set forth in Section 932, selected six proposals, including ABBK's proposal for appropriate NEPA review. DOE selected ABBK's proposal for negotiation of a funding agreement in part because of its particular scale, location, and technology.

DOE will consider reasonable only alternatives to the proposed action that meet its purpose and need. Accordingly, DOE proposes to analyze the following alternatives in detail in the EIS: (1) To provide federal funding for the Abengoa Biorefinery Project as proposed by ABBK (the Proposed Action); (2) to provide federal funding for the Abengoa Biorefinery Project contingent on implementation of environmental mitigation measures, which would be determined based on the environmental impact analysis in the EIS; and (3) to not provide federal funding for the proposed project (the No Action alternative).

Preliminary Identification of Environmental Issues: The purpose of this Notice is to solicit comments and suggestions for consideration in the preparation of the EIS. As background for public comment, this Notice contains a list of potential environmental issues that DOE has tentatively identified for analysis. This list identifies resource areas that may be affected by construction and operation of the proposed Project and that DOE plans to analyze in the EIS. This list is not intended to be all-inclusive or to imply any predetermination of impacts. DOE welcomes comments on this list and other suggestions on the scope of the EIS.

1. Water Resources: Potential impacts on surface and groundwater resources and water quality, including effects of water usage, wastewater management, storm water management.

2. Potential impacts on apparent isolated wetlands at the project site.

3. Utility and transportation infrastructure requirements for delivery of feedstocks and process chemicals to the facility and distribution of products from the facility to the marketplace.

4. Land Use: Changes in land use, including the proposed site and the geographical area that will provide feedstock to the proposed facility.

5. Local and Regional Air Quality.

6. Cultural Resources: Including potential effects on historic and archaeological resources and Native American tribal resources.

7. Ecological Resources: Terrestrial and aquatic plants and animals including state and Federally listed threatened and endangered species and other protected resources.

8. Health and safety impacts: Including construction-related safety and process-related safety associated with handling and management of process chemicals.

9. Noise: Potential impacts resulting from construction and operation of the proposed plant and from transportation of feedstocks, process materials, and plant byproducts.

10. Socioeconomic impacts: Potential socioeconomic impacts of plant construction and operation, including effects on public services and infrastructure resulting from the influx of construction personnel and plant operating staff, and environmental justice issues.

11. Aesthetic and scenic resources: Potential visual effects associated with plant structures and operations.

12. Cumulative impacts that result from the incremental impacts of the proposed plant when added to the other past, present, and reasonably foreseeable future activities within the regions of influence. This may include potential impacts resulting from widespread replication of this type of technology.

13. Global Climate Change: Potential greenhouse gas emissions and impacts on global climate change that may result from this project.

Public Scoping Process: Interested agencies, organizations, Native American tribes, and members of the public are encouraged to submit comments or suggestions concerning the content of the EIS, including the range of reasonable alternatives and the potential environmental impacts to be analyzed. DOE invites oral comments and suggestions at the public scoping meeting. The public scoping period will be open until October 9, 2008.

Written comments should be sent to Kristin Kerwin as described in the **ADDRESSES** section of this Notice. The public scoping meeting will be held at the location, date, and time listed in the **DATES** and **ADDRESSES** sections of this notice. This meeting will be informal. A presiding officer designated by DOE will establish procedures governing the conduct of the meeting and an overview of the proposed Project will be provided. The meeting will not be conducted as an evidentiary hearing, and those who choose to make

statements will not be cross-examined by other speakers. However, DOE representatives may ask speakers questions to help ensure that DOE fully understands their comments or suggestions. To request time to speak at the meeting, please contact Kristin Kerwin via telephone, mail, fax or e-mail as listed in the **ADDRESSES** section of this Notice. Persons may also sign up to speak before the meeting at the reception desk at the entrance to the meeting and will be provided opportunities to speak after previously scheduled speakers have spoken, as time allows. To ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted to each speaker. Depending on the number of persons requesting to speak, DOE may allow longer times for representatives of organizations. Persons wishing to speak on behalf of an organization should identify that organization when they sign up to speak.

A complete transcript of the public scoping meeting will be retained by DOE and made available to the public for review via the Golden Field Office Online Public Reading Room at: http://www.eere.energy.gov/golden/Reading_Room.aspx and during business hours at the Department of Energy, Freedom of Information Reading Room, Forrestal Building, Room 1E-90, 1000 Independence Avenue, SW., Washington, DC 20585-0001. Additional copies of the public scoping meeting transcripts will be made available during business hours at the following location: Stevens County Library, 500 S. Monroe Street, Hugoton, Kansas 67951.

Draft EIS Schedule and Availability: The draft EIS is scheduled to be issued in late 2008. The availability of the draft EIS will be announced in the **Federal Register** and local media. The draft EIS will be made available for public inspection at the location listed above and on the Internet. Comments on the Draft EIS will be considered in preparing the Final EIS.

Interested parties who do not wish to submit comments at this time, but who would like to receive a copy of the draft EIS should contact Kristin Kerwin as provided in the **ADDRESSES** section of this notice.

Issued in Washington, DC, on this 19th day of August, 2008.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E8-19633 Filed 8-22-08; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[FWS-R6-ES-2008-0111; MO 9921050083-B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Black-tailed Prairie Dog as Threatened or Endangered**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the black-tailed prairie dog (*Cynomys ludovicianus*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the black-tailed prairie dog may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species to determine if listing the species is warranted. To ensure that the review is comprehensive, we are soliciting scientific and commercial information regarding this species.

DATES: To allow us adequate time to conduct a status review, we request that we receive information on or before February 2, 2009.

ADDRESSES: You may submit information by one of the following methods:

- *Federal rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R6-ES-2008-0111; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Pete Gober, Field Supervisor, South Dakota Fish and Wildlife Office, 420 South Garfield Avenue, Suite 400, Pierre, SD 54501; telephone at 605-224-8693, extension 224. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:**Information Solicited**

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the black-tailed prairie dog. We request information from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the status of the black-tailed prairie dog. We are seeking information regarding the species' historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species or its habitat.

Please note that comments merely stating support or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1533(b)(1)(A)) directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available." At the conclusion of the status review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act (16 U.S.C. 1533(b)(3)(B)).

You may submit your information concerning this 90-day finding by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Information and materials we receive, as well as supporting documentation we used in preparing this 90-day finding, will be available for public inspection

on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, South Dakota Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the finding. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

In making this finding, we relied on information provided by the petitioners, as well as information readily available in our files at the time of the petition review. We evaluated the information in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial scientific and commercial information" threshold.

On August 6, 2007, we received a formal petition dated August 1, 2007, from Forest Guardians (now WildEarth Guardians), Biodiversity Conservation Alliance, Center for Native Ecosystems, and Rocky Mountain Animal Defense, requesting that we list the black-tailed prairie dog throughout its historical range (and portions thereof) in Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, and in Canada and Mexico. The petitioners also requested that, if the Service believes that *Cynomys ludovicianus arizonensis* is a distinct subspecies or population segment, it be listed as threatened or endangered throughout its

historical range as well. In addition, the petitioners requested that the Service designate critical habitat for the species. The petition clearly identified itself as a petition and included the requisite identification information as required in 50 CFR 424.14(a). We acknowledged receipt of the petition in a letter to the petitioners on August 24, 2007, and indicated that emergency listing of the black-tailed prairie dog was not warranted. We also explained that we would not be able to address the petition until fiscal year 2009, due to existing court orders and settlement agreements for other listing actions. However, in fiscal year 2008, funding became available, and we began work on this petition finding.

Previous Federal Actions

On October 24, 1994, we received a petition from Biodiversity Legal Foundation and Jon C. Sharps, dated October 21, 1994, to classify the black-tailed prairie dog as a Category 2 candidate species. Category 2 included taxa for which information in our possession indicated that a proposed listing rule was possibly appropriate, but we did not have available sufficient data on biological vulnerability and threats to support a proposed rule. We reviewed the petition, and on May 5, 1995, we concluded that the black-tailed prairie dog did not warrant Category 2 candidate status.

On July 31, 1998, we received a petition from the National Wildlife Federation dated July 30, 1998, to list the black-tailed prairie dog as threatened throughout its range. On August 26, 1998, we received another petition to list the black-tailed prairie dog as threatened throughout its range from Biodiversity Legal Foundation, Predator Project, and Jon C. Sharps. We accepted this second request as supplemental information to the National Wildlife Federation petition. On February 4, 2000, we announced a 12-month finding that issuing a proposed rule to list the black-tailed prairie dog was warranted but precluded by other higher priority actions (65 FR 5476), and the species was included in the list of candidate species. Two candidate assessments and resubmitted petition findings for the black-tailed prairie dog were completed on October 30, 2001 (66 FR 54808), and June 13, 2002 (67 FR 40657). On August 18, 2004, we completed a resubmitted petition finding for the black-tailed prairie dog (69 FR 51217), which concluded that listing the species was not warranted, because recent distribution, abundance, and trend data indicated that the threats to the species

were not as serious as earlier believed. The species was then removed from the candidate list.

On February 7, 2007, Forest Guardians and others filed a complaint challenging the decision to remove the black-tailed prairie dog from the candidate list. On August 6, 2007, we received a new formal petition dated August 1, 2007, from Forest Guardians (now WildEarth Guardians), Biodiversity Conservation Alliance, Center for Native Ecosystems, and Rocky Mountain Animal Defense, requesting we list the black-tailed prairie dog throughout its historical range (and portions thereof) in Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming and in Canada and Mexico. The plaintiffs filed the new petition, and withdrew their 2007 complaint, on October 9, 2007.

On March 13, 2008, WildEarth Guardians filed a complaint for failure to complete a 90-day finding on their August 1, 2007 petition. On July 1, 2008, a stipulated settlement and order were signed, in which we agreed to submit a 90-day finding to the **Federal Register** by November 30, 2008. This 90-day finding is in response to the stipulated settlement.

Species Information

The black-tailed prairie dog is a member of the Sciuridae family, which includes squirrels, chipmunks, marmots, and prairie dogs. Prairie dogs constitute the genus *Cynomys*. Taxonomists currently recognize five species of prairie dogs belonging to two subgenera, all in North America (Hoogland 2006a, pp. 8–9). The white-tailed subgenus, *Leucocrossuromys*, includes Utah (*C. parvidens*), white-tailed (*C. leucurus*), and Gunnison's prairie dogs (*C. gunnisoni*) (Hoogland 2006a, pp. 8–9). The black-tailed subgenus, *Cynomys*, consists of Mexican (*C. mexicanus*) and black-tailed prairie dogs (Hoogland 2006a, pp. 8–9). Generally, the black-tailed prairie dog occurs east of the other four species in more mesic habitat (Hall and Kelson 1959, p. 365). Based on information currently available, we consider the black-tailed prairie dog a monotypic species (Pizzimenti 1975, p. 64). Information submitted by the petitioners and readily available within our files indicates that the black-tailed prairie dog is a valid taxonomic species and a listable entity under the Act. We found that *Cynomys ludovicianus arizonensis* is not considered a distinct subspecies or population segment (Pizzimenti 1975, p. 64).

The Utah and Mexican prairie dogs are currently listed as threatened (49 FR 22330) and endangered (35 FR 8495), respectively. The Gunnison's prairie dog is currently a candidate species within the montane portion of its range (73 FR 6660). The white-tailed prairie dog is undergoing formal status review to consider whether listing is warranted.

The black-tailed prairie dog is a burrowing, colonial mammal; brown in color; approximately 12 inches (30 centimeters) in length; and weighing 1–3 pounds (500–1,500 grams) (Hoogland 2006a, pp. 8–9). The black-tailed prairie dog can be distinguished from other prairie dog species by several key characteristics, which include having a longer (2–3 inches (7–10 centimeters)) black-tipped tail, being non-hibernating, and living at lower elevations (2,300–7,200 feet (700–2,200 meters)) (Hoogland 2006a, pp. 8–9). Overlap of the geographic ranges of the five species is minimal; consequently, species can be identified by locality (Hall and Kelson 1959, p. 365; Hoogland 2006a, pp. 8–9).

The black-tailed prairie dog is considered a keystone species, that is, one that is an indicator of species composition within an ecosystem, and that is key to the persistence of the ecosystem (Kotliar *et al.* 1999, pp. 183, 185). The black-footed ferret (*Mustela nigripes*), swift fox (*Vulpes velox*), golden eagle (*Aquila chrysaetos*), and ferruginous hawk (*Buteo regalis*) utilize prairie dogs as a food source; the mountain plover (*Charadrius montanus*) and burrowing owl (*Athene cunicularia*) depend on habitat (burrows) created by prairie dogs. Numerous other species share habitat with prairie dogs, and rely on them to varying degrees (Kotliar *et al.* 1999, pp. 181–182).

Several biological factors determine the reproductive potential of the black-tailed prairie dog. Females usually do not breed until their second year, live 4–5 years, and produce a single litter of an average of 3 pups annually (Hoogland 2001, p. 917; Hoogland 2006b, p. 38). Therefore, 1 female may produce 0 to 15 young in its lifetime. While the black-tailed prairie dog is not prolific in comparison to many other rodents, it is capable of rapid population increases after population reductions (Collins *et al.* 1984, p. 360; Pauli 2005, p. 17; Reeve and Vosburgh 2006, p. 144).

Historically, black-tailed prairie dogs generally occurred in large colonies that often contained thousands of individuals, covered hundreds or thousands of acres, and extended for miles (Bailey 1905, p. 90; Bailey 1932, p. 122; Ceballos *et al.* 1993, p. 109; Lantz 1903, p. 2671). Currently, most

colonies are much smaller. Colonial behavior offers an effective defense mechanism by aiding in the detection of predators and by deterring predators through mobbing behavior (Hoogland 1995, pp. 3–6). It increases reproductive success through cooperative rearing of juveniles and aids parasite removal via shared grooming (Hoogland 1995, pp. 3–6).

Colonial behavior can increase the transmission of disease (Antolin *et al.* 2002, p. 122; Biggins and Kosoy 2001, p. 911; Olsen 1981, p. 236). Sylvatic plague is a disease foreign to North America that can spread from prairie dog to prairie dog through the exchange of infected fleas or by contact between infected mammals (Biggins and Kosoy 2001, p. 911) (*see Threats Analysis, Factor C*).

Species Range

The historical range of the black-tailed prairie dog included portions of 11 States, Canada, and Mexico (Hall and Kelson 1959, p. 365). The black-tailed prairie dog currently exists in 10 States—Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming. The species occurs from

extreme south-central Canada to northeastern Mexico and from approximately the 98th meridian west to the Rocky Mountains. It has been extirpated from Arizona (Arizona Game and Fish Department 1988, p. 26). Range contractions have occurred in the southwestern portion of the species' range in New Mexico and Texas through conversion of grasslands to desert shrub (Pidgeon *et al.* 2001, p. 1773; Weltzin *et al.* 1997, pp. 758–760). In the eastern portion of the species' range in Kansas, Nebraska, Oklahoma, South Dakota, and Texas, range contractions are largely due to habitat destruction by cropland development (Black-footed Ferret Recovery Foundation 1999, entire).

Population Estimates

Most estimates of black-tailed prairie dog populations are not based on numbers of individual animals, but on estimates of the amount of occupied habitat. The actual number of animals present depends upon the density of animals in that locality. Density of animals varies depending on the season, region, and climatic conditions, but typically ranges from 2–18 individuals per acre (ac) (5–45 individuals per

hectare (ha)) (Fagerstone and Ramey 1996, p. 85; Hoogland 1995, p. 98; King 1955, p. 46; Koford 1958, p. 10–11). Density also can vary temporally, due to poisoning, plague, and recreational shooting as discussed in later sections.

Numerous Statewide estimates of black-tailed prairie dog occupied habitat are available, spanning a time period from 1903 to the present. In Table 1, we summarize historical estimates, 1961 estimates from the Bureau of Sport Fisheries and Wildlife (BSFW) that resulted from a rangewide survey following large-scale poisoning efforts, and the most recent available estimates. Different methodologies were used at different times and in different locales to derive the various estimates presented; however, these estimates are the best available and are comparable for the purpose of determining general population trends on the scale of order-of-magnitude changes. Methods have improved in recent years with the advent of tools such as aerial survey, satellite imagery, and geographic information systems (GIS). Consequently, estimates that use these tools can be expected to be more accurate.

TABLE 1—STATEWIDE OCCUPIED HABITAT ESTIMATES FOR THE BLACK-TAILED PRAIRIE DOG

State or country	Historical acres (hectares)	1961 (BSFW) acres (hectares)	Most recent acres (hectares)
Arizona	650,000 (263,045) (Van Pelt 2007)	0	0.
Colorado	3,000,000 (1,214,056) (Clark 1989) 7,000,000 (2,832,799) (Knowles 1998).	96,000 (38,849)	631,000 (255,356); (Van Pelt 2007).
Kansas	2,000,000 (809,371) (Lantz 1903) 2,500,000 (1,011,714) (Knowles 1998).	50,000 (20,234)	130,521 (52,819); (Van Pelt 2007).
Montana	1,471,000 (595,292) (Flath & Clark 1986) 6,000,000 (2,428,113) (Knowles 1998).	28,000 (11,331)	90,000 (364,217); (Van Pelt 2007).
Nebraska	6,000,000 (2,428,113) (Knowles 1998)	30,000 (12,140)	136,991 (55,428); (Van Pelt 2007).
New Mexico	>6,640,000 (2,687,112) (Bailey 1932)	17,000 (6,879)	43,639 (17,660); (Van Pelt 2007).
North Dakota	2,000,000 (809,371) (Knowles 1998) ..	20,000 (8,093)	22,396 (9,063); (Van Pelt 2007).
Oklahoma	950,000 (384,451) (Knowles 1998)	15,000 (6,070)	57,677 (23,341) (Van Pelt 2007).
South Dakota	1,757,000 (711,032) (Linder <i>et al.</i> 1972).	33,000 (13,354)	625,410 (253,094) (Kempema 2007).
Texas	57,600,000 (23,309,892) (Bailey 1905)	26,000 (10,521)	132,515 (53,626) (Van Pelt 2007).
Wyoming	16,000,000 (6,474,970) (Knowles 1998).	49,000 (19,829)	229,607 (92,918) (Van Pelt 2007).
United States Total	78,700,000 (31,848,760) (BFFRF 1999) 102,600,000 (41,520,746) (sum of State average above).	364,000 (147,305)	2,100,000 (849,839).
Canada	2,000 (809) (Knowles 1998)	2,500 (1,011) (Everest & Tuckwell 2007).
Mexico	1,384,000 (560,084) (Ceballos <i>et al.</i> 1993).	>49,000 (19,829) (List 2001).
Rangewide	80,000,000–104,000,000 (32,374,851–42,087,306).	2,152,000 (870,883).

Several estimates of historically occupied habitat for all species of prairie dogs are available; the most

credible estimates indicate that approximately 100,000,000 ac (40,000,000 ha) of occupied habitat

existed rangewide (Anderson *et al.* 1986, p. 50; Miller *et al.* 1996, p. 24; Nelson 1919, p. 5). If average historical

estimates for each State, Canada, and Mexico are summed, the rangewide estimate is approximately 104,000,000 ac (41,600,000 ha). Based on a quantification of potential habitat throughout the range of the black-tailed prairie dog and assuming a 20 percent occupancy rate (an average based on historical occupation of natural short- and mixed-grass prairie available), approximately 80,000,000 ac (32,000,000 ha) of black-tailed prairie dog occupied habitat existed historically (Black-footed Ferret Recovery Foundation 1999, entire; Ceballos *et al.* 1993, p. 109; Whicker and Detling 1988, p. 778). Therefore, a reasonable rangewide estimate of historically occupied habitat for the black-tailed prairie dog is 80–100 million ac (32–40 million ha).

In 1961, the BSWF, a predecessor of the Service, tabulated habitat estimates on a county-by-county basis throughout the range of all prairie dog species in the western United States (BSFW 1961, p. 1). These estimates were completed by District Agents for the Bureau who were familiar with the habitat due to their past control efforts. The survey was completed in response to concerns from within the agency regarding possible adverse impacts to prairie dogs following large-scale poisoning (Oakes 2000, p. 167). Although the data are from 1961, they provide a rangewide estimate for a single point in time when prairie dogs were reduced to very low numbers by intensive government poisoning efforts. The survey has been cited in other seminal documents, including Cain *et al.* (1972, Appendix VIII) and Leopold (1964, p. 38), which resulted in significant changes in predator and rodent control policies in the United States, including a ban of Compound 1080, a highly toxic poison once widely used to control prairie dogs and other mammal species.

If the most recent estimates of occupied habitat are summed for each of the States, Canada, and Mexico, the rangewide estimate is 2,152,000 ac (870,883 ha). Rangewide and Statewide trends for area of black-tailed prairie dog occupied habitat appear to be increasing since the low point following a half century of coordinated rangewide control efforts.

Trends from site-specific estimates are not always reflected in Statewide trends. Site-specific estimates are typically derived from field surveys related to monitoring or research, and include extensive ground-truthing, which provides more precise assessments. Consequently, site-specific estimates are often more accurate than Statewide estimates. However, black-

tailed prairie dog monitoring and research are often focused on plague epizootics (outbreaks of disease that rapidly affect many animals in a specific area at the same time). Consequently, the trends available regarding site-specific occupied habitat estimates often include plague-affected sites (see Table 2 in Threats Analysis Factor C).

Population Impacts

Three major impacts, which somewhat overlap, have influenced historical black-tailed prairie dog populations. The first major impact on the species was the initial conversion of prairie grasslands to cropland in the eastern portion of its range from approximately the 1880s to the 1920s. The conversion of native prairie to cropland likely reduced occupied habitat in the United States from as much as 100 million ac (40 million ha) of occupied black-tailed prairie dog colonies to about 50 million ac (20 million ha) or less (Laycock 1987, p. 4; Whicker and Detling 1988, p. 778). The second major impact on the species was large-scale poisoning efforts, conducted from approximately 1918 to 1972, to reduce competition between prairie dogs and domestic livestock (BSFW 1961, p. 1). Large-scale, repeated control efforts likely reduced occupied habitat in the United States from about 50 million ac (20 million ha) to approximately 364,000 ac (162,000 ha) by 1961 (BSFW 1961). The third major impact on the species was the inadvertent introduction of an exotic disease, sylvatic plague, into North American ecosystems around 1900. The first recorded impacts on the black-tailed prairie dog were recorded in 1946 (Miles *et al.* 1952, p. 41).

Threats Analysis

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR 424 set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

Under the Act, a threatened species is defined as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. An endangered species is defined as a species that is in danger of extinction throughout all or a significant portion of its range. We evaluated each of the five listing factors to determine whether the level of threat identified by information in the petition or in our files was substantial and indicated that listing the black-tailed prairie dog as threatened or endangered may be warranted. Our evaluation is presented below.

We placed the threats listed in the petition under the most appropriate listing factor. However, we recognize that several potential threats affecting the species might be considered under more than one factor. For example, poisoning can affect black-tailed prairie dog habitat (Factor A), and can be affected by State and Federal regulatory mechanisms (Factor D), but is primarily addressed in this finding under Factor E (other natural or manmade factors).

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petition

The petitioners assert that several factors are affecting black-tailed prairie dog and its habitat, including that:

(1) Conversion to cropland, resulting in habitat loss, is likely increasing due to the demand for corn-based ethanol for vehicle fuel and the removal of land from the Conservation Reserve Program (CRP) for increased corn production;

(2) Urbanization is a threat to the species and its habitat, especially in the Front Range of Colorado;

(3) Oil, gas, and mineral extraction cause habitat degradation and loss, and increased habitat fragmentation;

(4) The loss of prairie dogs from shooting, plague, and poisoning causes a corresponding loss of habitat, primarily due to degraded habitat, decreased grassland productivity, and eventual burrow collapse; and

(5) Livestock grazing and fire suppression negatively impact black-tailed prairie dog habitat by allowing the proliferation of woody plants and noxious weeds that replace native forage species.

Response

In some instances, black-tailed prairie dog habitat is currently being destroyed, modified, or curtailed by: (1) Conversion of native prairie habitat to cropland; (2) urbanization; (3) oil, gas, and mineral extraction; (4) habitat loss

caused by loss of prairie dogs; and (5) livestock grazing, fire suppression, and weeds. However, extensive rangeland remains available for potential expansion of black-tailed prairie dog occupied habitat.

The most substantial cause of habitat destruction that we are able to quantify is cropland development. Conversion of the native prairie to cropland has largely progressed across the species' range from east to west; the most intensive agricultural use is in the eastern portion of the species' range. By 1999, approximately 37 percent of the historical suitable habitat within the species' range had been converted to cropland uses (Black-footed Ferret Recovery Foundation 1999, entire). The Natural Resources Conservation Service quantified land cover and use changes from 1982 to 1997; the 11 States within the historical range of the species experienced an estimated 2 percent loss of rangeland during this time period (U.S. Department of Agriculture 2000, pp. 18–24). When the 2 million ac (1.6 million ha) of currently occupied habitat is contrasted with the 342 million ac (139 million ha) of remaining non-Federal rangeland (statistics for Federal land were unavailable), it appears that sufficient potential habitat still occurs in each of the 11 States within the historical range of the species to accommodate large expansions of black-tailed prairie dog populations. This estimate of potential habitat includes rangeland Statewide, but does not include pasture or CRP lands, because these areas were not included in the analysis. However, prairie dogs do use pasture, and therefore this estimate is considered conservative.

Urbanization is occurring within portions of the black-tailed prairie dog range, particularly the Front Range of Colorado. However, on a larger Statewide or rangewide context, loss of habitat due to urbanization is not significant, given the recent Statewide estimates of occupied habitat in Colorado and elsewhere (Table 1). The accuracy of the 2004 Colorado Division of Wildlife (CDOW) estimate of 631,000 ac (255,000 ha) of occupied habitat in Colorado is questioned by the petitioners. Other recent estimates of occupied habitat available for Colorado include: 461,000 ac (187,000 ha), calculated from Tipton et al. (2008, p. 1002); a minimum of 788,000 ac (319,000 ha) of occupied habitat (CDOW 2007, entire); and a minimum of 215,000 ac (87,000 ha) of active occupied habitat (EDAW 2000, p. 20). Each of these estimates for Colorado indicates a substantial increase in occupied habitat since 1961.

Oil, gas, and mineral extraction are occurring within portions of the black-tailed prairie dog range. However, no information provided by the petitioners or readily available in our files quantifies the impacts. Additionally, population trends do not suggest that oil, gas, and mineral extraction are a limiting factor for the species.

Black-tailed prairie dogs do affect their own habitat. The loss or reduction of prairie dogs in areas can result in that habitat becoming degraded. However, documentation of prairie dog effects on habitat is mixed. Black-tailed prairie dogs can have a positive effect on habitat (Johnson-Nistler et al. 2004, p. 641; Koford 1958, pp. 43–62; Kotliar et al. 1999, p. 178; Lantz et al. 2006, p. 2671); positive effects have been particularly notable in the southwestern portion of the species' range where the foraging and clipping habits of prairie dogs destroy seedlings of undesirable shrub and tree species that may invade and eventually convert grasslands, and aeration of soil from burrow construction increases growth of grasses (Davis 1974, p. 156; Fagerstone and Ramey 1996, p. 89; Koford 1958, pp. 43–62; List et al. 1997, p. 150; Weltzin et al. 1997, pp. 758–760). Black-tailed prairie dogs also may have a neutral habitat effect, i.e., a balance between clipping vegetation that could be forage for cattle and improving the protein content of remaining grass, or negative habitat effect by reducing grass species and causing conversion to forb species undesirable for cattle (Bonham and Lerwick 1976, p. 225; Fagerstone and Ramey 1996, p. 88; Johnson-Nistler et al. 2004, p. 641; Klatt and Hein 1978, p. 316; Koford 1958, pp. 43–62). No information provided by the petitioners or readily available in our files quantifies the overall impact that black-tailed prairie dogs have on their own habitat. However, extensive rangeland remains available for potential expansion of black-tailed prairie dog habitat (U.S. Department of Agriculture 2000, pp. 18–24).

Information exists regarding the increase of nonnative plant species in the presence of overgrazing and the absence of fire. However, the impact of plant composition on habitat suitability for black-tailed prairie dogs is contradictory (Cеровski 2004, p. 101; Detling 2006, p. 115; Koford 1958, pp. 43–62; Uresk et al. 1981, p. 200; Vermeire 2004, p. 691). Available information indicates that livestock grazing typically encourages black-tailed prairie dog expansion (Andelt 2006, p. 131; Fagerstone and Ramey 1996, p. 88; Forest 2005, p. 528; Groombridge 1992, p. 290; Hubbard and

Schmitt 1983, p. 30; Koford 1958, p. 68; Marsh 1984, p. 203; Osborn and Allan 1949, p. 330; Snell 1985, p. 30; Snell and Hlavachick 1980, p. 240; Uresk et al. 1981, p. 200; U.S. Forest Service 1995, p. 5; U.S. Forest Service 1998, p. 4; Wuerthner 1997, pp. 460–461). Additionally, extensive rangeland remains available for potential expansion of occupied habitat (U.S. Department of Agriculture 2000, pp. 18–24).

Summary of Factor A

On the basis of our evaluation of the most recent Statewide estimates of occupied habitat and the amount of potential habitat available for expansion, we determined that the petition does not present substantial information indicating that listing the black-tailed prairie dog may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range. The threat to prairie dogs presented by sylvatic plague is addressed under Factor C, and the threat presented by poisoning is addressed under Factor E.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petitioners assert that recreational shooting of black-tailed prairie dogs and collecting for the pet trade are threats to the black-tailed prairie dog; they indicate that shooting is of special concern because of the cumulative effect of localized extirpation across the species' range. The petitioners indicate that shooting causes both direct effects (mortality) and indirect effects such as behavioral changes, diminished reproduction and body condition, and emigration. The petitioners indicate that the number of shooters is increasing, and the technology available to them is advancing.

The petitioners do not believe that collecting for the pet trade has as great an impact as several other factors, but suggest that pet prairie dogs infected with an exotic disease could be released into the wild, which could pose a risk to wild black-tailed prairie dogs.

Response

Recreational shooting of black-tailed prairie dogs can reduce population densities, cause behavioral changes, diminish reproduction and body condition, increase emigration, and cause extirpation in isolated circumstances (Knowles 1988, p. 54; Pauli 2005, p. 1; Reeve and Vosburgh 2006, p. 144; Stockrahm 1979, pp. 80–

84; Vosburgh 1996, pp. 13, 15, 16, and 18; Vosburgh and Irby 1998, pp. 366–371). However, available information indicates that populations can recover from very low numbers following intensive shooting (Cully and Johnson 2006, pp. 6–7; Dullum *et al.* 2005, p. 843; Knowles 1988, p. 12; Pauli 2005, p. 17; Vosburgh 1996, pp. 16, 31). Based on the research cited in this paragraph, it appears that a typical scenario is that either: (1) Once populations have been reduced, shooters go elsewhere and populations are allowed to recover; or (2) shooting maintains reduced population size at specific sites. Research does not further clarify or quantify these factors, and shooting, investigated separately from other threat factors, does not appear to have a significant impact on black-tailed prairie dogs, overall. We do not have an analysis on rangewide impacts of shooting on prairie dogs.

Many landowners maintain prairie dog populations and derive income from charging people for recreational shooting. Monetary gain from shooting fees may motivate landowners to preserve prairie dog colonies for future shooting opportunities, which is currently an alternative to eradicating them by poisoning (Reeve and Vosburgh 2006, pp. 154–155; Vosburgh and Irby 1998, pp. 366–371).

Substantial information is not presented by the petitioners or available in our files to evaluate potential effects of collecting or the spread of disease resulting from the pet trade.

Summary of Factor B

Recreational shooting of prairie dogs can cause localized effects. However, much of the literature documenting effects from shooting of prairie dogs also

describes subsequent rebounds in local populations; extirpations, while documented, are rare and, therefore, not a significant threat to the species. Recent Statewide estimates of occupied habitat further reinforce this observation by documenting population increases in areas subject to shooting. We conclude that neither shooting nor the pet trade is a threat to the black-tailed prairie dog. On the basis of our evaluation, we determined that the petition does not present substantial information indicating that listing the black-tailed prairie dog may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease and Predation

Information Provided in the Petition

The petitioners assert that sylvatic plague causes mortality rates approaching 100 percent in infected colonies. They indicated that evidence is too preliminary to say that high levels of exposure are necessary before prairie dogs contract plague, or to say that prairie dogs have a limited immune response to plague. The petitioners challenge studies indicating that isolated, low density populations are protected from plague, and indicating that some sites have recovered to pre-plague levels. They note that in recent years several epizootics have occurred, and that plague has expanded into South Dakota. They also note that although not a rangewide threat, prairie dogs also are susceptible to tularemia and monkeypox.

Response

Plague is an exotic disease foreign to the evolutionary history of North

American prairie dogs. It is caused by the bacterium *Yersinia pestis*, which fleas acquire by biting infected animals, and subsequently transmit via a bite to other animals. The disease also can be transmitted through pneumonic (airborne) or septicemic (blood) pathways from infected to disease-free animals (Barnes 1993, p. 28; Cully *et al.* 2006, p. 158; Ray and Collinge 2005, p. 203; Rocke *et al.* 2006, p. 243; Webb *et al.* 2006, p. 6236). Plague was first observed in wild rodents in North America near San Francisco, California in 1903 (Eskey and Haas 1940, p. 1), and was first documented in black-tailed prairie dogs in Texas in 1946 (Miles *et al.* 1952, p. 41).

Black-tailed prairie dogs are very sensitive to plague, and mortality frequently reaches 100 percent (Barnes 1993, p. 28). Two patterns of die-offs are typically described for black-tailed prairie dogs: (1) A rapid and nearly 100 percent die-off with incomplete recovery, such as has occurred at the Rocky Mountain Arsenal and the Comanche National Grassland in Colorado (Cully and Williams 2001, pp. 899–903); and (2) a partial die-off resulting in smaller, but stable, populations and smaller, more dispersed colonies, such as has occurred at the Cimarron National Grassland (Cully and Williams 2001, pp. 899–903). Several researchers have suggested that the response of black-tailed prairie dogs to plague may vary based on population density or degree of colony isolation (Cully 1989, p. 49; Cully and Williams 2001, pp. 899–903; Lomolino *et al.* 2003, pp. 118–119). Table 2 illustrates die-offs and extent of recovery for several well-studied sites that have experienced plague epizootics.

TABLE 2—SITE-SPECIFIC ESTIMATES OF OCCUPIED BLACK-TAILED PRAIRIE DOG HABITAT OVER TIME (IN ACRES (HECTARES))

Site	1st Estimate	2nd Estimate	3rd Estimate	4th Estimate	5th Estimate
Comanche NG, CO	5,000 (2,023) in 1995 (Augustine <i>et al.</i> 2008).	1,600 (647) in 1999 (PP) (Augustine <i>et al.</i> 2008).	10,700 (4,330) in 2005 (Augustine <i>et al.</i> 2008).	3,000 (1,214) in 2006 (PP) (Augustine <i>et al.</i> 2008).	
Pueblo Chemical Depot, CO.	4,333 (1,753) in 1998 (Young 2008).	67 (27) in 2000 (PP) (Young 2008).	3,423 (1,385) in 2005 (Young 2008).	2,712 (1,097) in 2006 (PP) (Young 2008).	
Rocky Mtn Arsenal, CO.	4,574 (1,851) in 1988 (Seery 2001).	247 (99) in 1989 (PP) (Seery 2001).	2,429 (982) in 1994 (Seery 2001).	22 (8) in 1995 (PP) (Seery 2001).	1,646 (666) in 2000 (Seery 2001).
N. Cheyenne Res., MT.	10,720 (4,338) in 1990 (Larson 2008).	378 (152) in 1995 (PP) (Fourstar 1998).	3,300 (1,335) in 2001 (Vosburgh 2003).	3,913 (1,585) in 2003 (Vosburgh 2003).	5,683 (2,299) in 2006 (Larson 2008).
Kiowa/Rita Blanca NG, TX, OK, NM.	1,600 (647) in 1999 (Cully & Johnson 2006).	6,800 (2,751) in 2003 (Cully & Johnson 2006).	4,500 (1,821) in 2004 (PP) (Cully & Johnson 2006).	3,000 (1,214) in 2005 (PP) (Cully & Johnson 2006).	
Thunder Basin NG, WY.	16,300 (6,596) in 2001 (Cully & Johnson 2006).	1,600 (647) in 2002 (PP) (Cully & Johnson 2006).	9,000 (3,642) in 2003 (Byer 2003).		

PP = post-plague.

Some studies have documented the development of antibodies in black-tailed prairie dogs surviving a plague epizootic. In one Colorado site, over 50 percent of survivors developed antibodies (Pauli 2005, pp. 1, 71). Recent laboratory research indicates that, at low levels of exposure, a small percentage of black-tailed prairie dogs show some immune response and consequently some resistance to plague, indicating that a plague vaccine may be developed in the future (Creekmore *et al.* 2002, pp. 32, 38). Preliminary work has demonstrated significantly higher antibody titers and survival rates in vaccinated black-tailed prairie dogs that were challenged with the plague bacterium (Mencher *et al.* 2004, pp. 5, 8–9). Oral vaccination may be effective for managing plague epizootics in free-ranging prairie dog populations by reducing mortality in exposed individuals (Mencher *et al.* 2004, pp. 8–9).

Since the black-tailed prairie dog was removed from the candidate list in 2004, plague has expanded its range into South Dakota, previously the only State where plague had not been documented in prairie dogs (Service 2005, p. 1). Despite 3 years of dusting prairie dog burrows in portions of the area with insecticide, in 2008, the disease reached the black-footed ferret recovery area in Conata Basin (Larson 2008, entire). Approximately 9,000 ac (3,600 ha) have been affected through June 2008 in Conata Basin (Griebel 2008, entire). Conata Basin is one of the largest remaining black-tailed prairie dog complexes, and is the most successful recovery site in North America for the endangered black-footed ferret. Plague also has been documented on Pine Ridge and Cheyenne River Reservations in South Dakota (Mann-Klager 2008, entire). The establishment of sylvatic plague in South Dakota could have a significant impact on both the black-tailed prairie dog and the black-footed ferret (Creekmore *et al.* 2002, p. 38).

Tularemia and monkeypox are diseases that have had impacts on captive black-tailed prairie dogs associated with the pet trade; however, we have no information to indicate that either of these diseases are a concern for wild prairie dogs.

Summary of Factor C

Some encouraging information regarding plague is available, particularly the development of a vaccine to improve management of plague in prairie dog populations. However, information indicates that plague has expanded its range in recent years and has caused population

declines at several sites. On the basis of our evaluation, we determined that the petition presents substantial information to indicate that listing the black-tailed prairie dog as a threatened or endangered species may be warranted due to sylvatic plague.

On the basis of our evaluation, we determined that the petition does not present substantial information indicating that listing the black-tailed prairie dog may be warranted due to tularemia or monkeypox.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petitioners assert that regulatory actions influencing habitat loss, shooting, the pet trade, sylvatic plague, and chemical control are inadequate to mitigate impacts from these threats. They indicate that: (1) Most of the regulations that promote black-tailed prairie dog conservation, enacted after the 1998 petitions to list the species, have been rescinded or weakened; (2) Federal, State, and Tribal regulations and local statutes and policies enacted since removal of the black-tailed prairie dog from the candidate list in 2004 favor killing rather than preserving the species; and (3) regulatory mechanisms pertaining to oil and gas development on Federal lands are inadequate and lack safeguards for black-tailed prairie dogs.

Response

Many of the regulations promoting prairie dog conservation enacted after the 1998 petitions to list the black-tailed prairie dog have been rescinded or weakened. Regulations enacted since removal of the black-tailed prairie dog from the candidate list in 2004 have not favored preservation of the species. Several notable examples are presented in the petition or readily available in our files, including:

(1) The U.S. Environmental Protection Agency (EPA) has not provided annual records to the Service on the amount of acreage poisoned with zinc phosphide or the amount of chemical sold, despite this reporting being included as a “Reasonable and Prudent Alternative” in a 1993 Biological Opinion (Service 1993, p. II–107). EPA did not agree to collect or provide this data in response to the Biological Opinion. On April 25, 2002, we sent a letter to EPA requesting any records on the amount of zinc phosphide sold or acres poisoned; EPA responded that they were not obligated to provide this information. Having records of this information would enable us to monitor the rangewide

effects of poisoning on black-tailed prairie dogs, and the endangered black-footed ferret, whose primary prey is the black-tailed prairie dog.

(2) The EPA has not initiated additional formal consultation, following the 1993 Biological Opinion, regarding the recent permitting of chlorophacinone and diphacinone (both anticoagulants) to poison prairie dogs, despite their statement that additional consultation may be necessary if any new uses of these pesticides are proposed (EPA 1998, p. 109). Use of these two chemicals constitutes new uses because neither poison was registered for field use on prairie dogs at the time of the 1993 Biological Opinion. Secondary poisoning has been documented in the field in a badger and a bald eagle; additionally, many other species, including the black-footed ferret, are known to be highly susceptible to both chlorophacinone and diphacinone.

(3) The U.S. Forest Service weakened their restrictions on poisoning by rescinding a 2000 policy letter regarding control of black-tailed prairie dogs (Manning 2004, entire), which allowed for expansion of poisoning on their lands.

(4) The State of Montana changed the dual status of the species from “nongame wildlife in need of management” and “vertebrate pest” to the single status of “vertebrate pest” (Hanebury 2007, entire), which eases restrictions on prairie dog poisoning.

(5) The State of South Dakota weakened the designation of “species of management concern” for the black-tailed prairie dog by designating it as a pest if: Plague is reported east of the Rocky Mountains, the Statewide population is greater than 145,000 ac (59,000 ha), or the species is colonizing within a 1-mile (1.6-kilometer) buffer around concerned landowners (South Dakota State Legislature 2005, entire). Currently all of these criteria are being met; therefore, the species is considered a pest in South Dakota, which eases restrictions on prairie dog poisoning.

(6) Since 2004, State agricultural departments have issued permits authorizing the use of chlorophacinone for poisoning prairie dogs in Colorado, Kansas, Nebraska, Oklahoma, Texas, and Wyoming.

(7) Since 2004, State agricultural departments have issued permits authorizing the use of diphacinone for poisoning prairie dogs in Colorado, Kansas, Nebraska, Texas, and Wyoming.

Following the 1998 petitions to list the black-tailed prairie dog, representatives from each State wildlife agency within the historical range of the

species formed the Prairie Dog Conservation Team. The Team developed "A Multi-State Conservation Plan for the Black-tailed Prairie Dog, *Cynomys ludovicianus*, in the United States" (Luce 2002, p. 2). The purpose of this Multi-State Plan was to provide standards for future prairie dog management within the 11 States. The Multi-State Plan endorsed the following minimum 10-year target objectives: (1) Maintain at least the currently occupied acreage of black-tailed prairie dog habitat in the United States; (2) increase to at least 1,693,695 ac (685,946 ha) of occupied black-tailed prairie dog acreage in the United States by 2011; (3) maintain at least the current black-tailed prairie dog occupied acreage in the 2 complexes greater than 5,000 ac (2,025 ha) that now occur on and adjacent to Conata Basin-Buffalo Gap National Grassland, South Dakota, and Thunder Basin National Grassland, Wyoming; (4) develop and maintain a minimum of 9 additional complexes greater than 5,000 ac (2,025 ha), with each State managing or contributing to at least one complex greater than 5,000 ac (2,025 ha) by 2011; (5) maintain at least 10 percent of total occupied acreage in colonies or complexes greater than 1,000 ac (400 ha) by 2011; and (6) maintain distribution over at least 75 percent of the counties in the historical range, or at least 75 percent of the historical geographic distribution. Objectives 3, 4, 5, and 6 have not yet been met; however, objectives 4 and 5 need not be met until 2011.

States also agreed to draft Statewide management plans. Colorado has finalized a conservation plan for grassland species that supports and meets the objectives of the Multi-State Plan. Kansas, Oklahoma, and Texas have finalized management plans that support the Multi-State Plan objectives, but have not yet met all of those

objectives. Montana, New Mexico, North Dakota, and South Dakota have finalized management plans that do not support or meet all of the objectives of the Multi-State Plan. Arizona, Nebraska, and Wyoming have draft plans that were not approved by their Wildlife Commissions.

Summary of Factor D

On the basis of our evaluation, we determined that the petition presents substantial information to indicate that listing the black-tailed prairie dog as a threatened or endangered species may be warranted due to the inadequacy of existing regulatory mechanisms, particularly regarding poisoning, which is discussed further under Factor E.

E. Other Natural or Manmade Factors Affecting Continued Existence

Information Provided in the Petition

The petitioners assert that several other threat factors are affecting the black-tailed prairie dog, including that: (1) The historical loss of approximately one-third of the species' potential habitat has resulted in black-tailed prairie dog populations, particularly in the eastern portion of the species' range, remaining vulnerable to stochastic events.

(2) The agricultural industry has put pressure on elected officials to increase both the methods and public financial assistance available to eradicate prairie dogs, promoting intolerance of the species, and that these officials have, in turn, put pressure on public land and wildlife managers to eradicate prairie dogs and halt initiatives to protect them; the majority of States with black-tailed prairie dogs have supported increased lethal control of prairie dogs, including the approval of anticoagulants;

(3) While drought is a natural phenomenon, its effects are exacerbated

by the other stressors affecting the species; and

(4) Climate change may contribute to invasion of noxious weeds and exacerbate the effects of habitat fragmentation.

Response

The black-tailed prairie dog evokes strong emotions in many people, which may affect regulations, recreational shooting, and poisoning. However, no information presented by the petitioners, or available in our files, quantifies the effects of intolerance separately from the actual threat factors. Therefore, we only address the latter.

The information presented by the petitioners and available in our files indicates that, in States with recent data available, including South Dakota and Wyoming, the extent of poisoning may have increased since the black-tailed prairie dog was removed from the candidate list in 2004 (Cеровski 2004, p. 101; Kempema 2007, p. 8). Table 3 includes the total sales of zinc phosphide bait by the South Dakota bait station in the 4 years prior to candidate removal. South Dakota is the only State that has been permitted by EPA to manufacture and sell zinc phosphide. Sales from the South Dakota bait station are largely limited to South Dakota, Wyoming, and Nebraska. The States of Colorado, Kansas, Montana, New Mexico, North Dakota, Oklahoma, and Texas acquire zinc phosphide from various manufacturers, but no recent information regarding sales has been made available to us. Additionally, as described in Factor D, other methods of prairie dog control have expanded since 2004, because the anticoagulants chlorophacinone and diphacinone were approved for use in Colorado, Kansas, Nebraska, Oklahoma, Texas, and Wyoming.

TABLE 3—SALES OF ZINC PHOSPHIDE BAIT PRIOR (FRIDLEY 2003, ENTIRE) AND SUBSEQUENT TO (KEMPEMA 2007, P. 8; LARSON 2008, ENTIRE) REMOVAL OF THE BLACK-TAILED PRAIRIE DOG FROM THE CANDIDATE LIST

Amount of bait sold in pounds (kilograms)	Year
42,400 (19,323)	2000
26,775 (12,145)	2001
42,500 (19,278)	2002
97,950 (44,429)	2003
	Species removed from candidate list.
334,900 (151,908)	2004
191,775 (86,988)	2005
307,900 (139,661)	2006
241,625 (109,599)	2007

If all of the bait sold by the South Dakota bait station were applied at the

recommended rate of 1/3 pound per acre (Hygnstrom *et al.* 1994, p. B-89),

this would equate to approximately 128,000 ac (52,000 ha) poisoned in

2000, 80,000 ac (33,000 ha) in 2001, 128,000 ac (52,000 ha) in 2002, 294,000 ac (119,000 ha) in 2003, 1,005,000 ac (407,000 ha) in 2004, 575,000 ac (233,000 ha) in 2005, 924,000 ac (374,000 ha) in 2006, and 725,000 ac (294,000 ha) in 2007. To provide some perspective, if the current estimate from Table 1 of approximately 2.1 million ac (850,000 ha) of occupied habitat in the United States is used, enough poison has been sold by this single facility since 2004 to poison all occupied habitat in the United States with enough remaining to poison an additional 1 million ac (400,000 ha). This scenario does not include the possibility of individuals stockpiling poison, or applying it at rates greater than 1/3 pound per acre.

Prairie dogs were extirpated from Arizona through poisoning campaigns that occurred in the early 1900s (Van Pelt 2007). As noted in the Population Estimates section of this document, that extirpation took place during a relatively unregulated period of large-scale extermination efforts using a highly toxic poison (Compound 1080).

Drought is a natural and cyclical occurrence within the range of the black-tailed prairie dog to which the animal has adapted (Forrest 2005, p. 528). It has been noted that, in at least some instances, occupied habitat tends to increase during periods of drought, and densities decrease, because animals spread out in search of food (Young 2008, p. 5). However, no information presented by the petitioners, or in our files, quantifies the effect of drought, singly or in conjunction with other threats, on the species rangewide.

The impacts of stochastic events and climate change on prairie dog populations are speculative. No information presented by the petitioners, or available in our files, quantifies these effects. No information on the direct relationship between climate change and population trends is available. Currently, black-tailed prairie dogs occupy, in fragmented populations, 2.1 million acres across 11 States; therefore, it is unlikely that stochastic events pose a threat to the species. In addition, extensive rangeland remains available for potential expansion of black-tailed prairie dog habitat (U.S. Department of Agriculture 2000, pp. 18–24). Therefore the threat of stochastic events does not appear to be significant.

Summary of Factor E

On the basis of our evaluation, we determined that the petition presents substantial information to indicate that listing the black-tailed prairie dog as a

threatened or endangered species may be warranted due to poisoning of black-tailed prairie dogs.

We determined that the petition does not present substantial information indicating that listing the black-tailed prairie dog may be warranted due to intolerance to or misconceptions about prairie dogs. We also determined that the petition does not present substantial information indicating that listing the black-tailed prairie dog may be warranted due to stochastic events, drought, or climate change.

Finding

We have assessed information provided by the petitioners and readily available in our files. On the basis of our evaluation, we find that the petition presents substantial information indicating that listing the black-tailed prairie dog under the Act may be warranted based on threats associated with Factor C (sylvatic plague), Factor D (inadequate Federal and State regulations), and Factor E (poisoning). Therefore, we are initiating a status review to determine whether listing the black-tailed prairie dog under the Act is warranted.

We determined that an emergency listing is not warranted at this time, because available information regarding Statewide populations indicates stable to increasing trends since 1961. However, if at any time we determine that emergency listing of the black-tailed prairie dog is warranted, we will initiate an emergency listing.

The petitioners also request that critical habitat be designated for the species concurrent with final listing under the Act. We consider the need for critical habitat designation when listing species. If we determine in our 12-month finding following the status review of the species that listing the black-tailed prairie dog is warranted, we will address the designation of critical habitat in the subsequent proposed rule.

References Cited

A complete list of all references cited in this document is available, upon request, from the South Dakota Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the U.S. Fish and Wildlife Service, South Dakota Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 23, 2008.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E8–28528 Filed 12–1–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 070719384–81468–03]

RIN 0648–AV80

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gulf of Mexico Gag Grouper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; interim measures; request for comments.

SUMMARY: This final rule implements temporary measures to reduce overfishing of gag in the Gulf of Mexico (Gulf). This final rule reduces the commercial quota for gag, establishes a gag bag limit within the grouper aggregate bag limit, and extends the recreational closed season for gag. In addition, if Federal regulations applicable to gag, red snapper, gray triggerfish, or greater amberjack are more restrictive than state regulations, this rule requires vessels with Federal reef fish permits to comply with Federal regulations regardless of where such fish are harvested. The intended effect is to reduce overfishing of gag and increase compliance with Federal regulations designed to end overfishing or rebuild overfished reef fish stocks in the Gulf.

DATES: This rule is effective January 1, 2009 through May 31, 2009. Comments must be received no later than 5 p.m., eastern time, on January 2, 2009.

ADDRESSES: You may submit comments on this temporary rule, identified by “0648–AV80, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: Application Control Center, Attention: (CFDA Number 84.116S), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

Selection Criteria: The selection criteria for evaluating the applications for this program are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. **Award Notices:** If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. **Administrative and National Policy Requirements:** We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. **Reporting:** At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

4. **Performance Measures:** Under the Government Performance and Results Act (GPRA), the Department will use the following measures to assess the performance of this program:

(a) The percentage of FIPSE grantees reporting project dissemination to others.

(b) The percentage of FIPSE projects reporting institutionalization on their home campuses.

If funded, you will be asked to collect and report data on these measures in your project's annual performance report (34 CFR 75.590). Applicants are also advised to consider these two measures in conceptualizing the design, implementation, and evaluation of the proposed project because of their importance in the application review process. Collection of data on these measures should be part of the project evaluation plan, along with any measures of progress on goals and objectives that are specific to your project.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Krish Mathur, FIPSE—Fund for the Improvement of Postsecondary Education, 1990 K Street, NW., room 6155, Washington, DC 20006-8544. Telephone: (202) 502-7512 or by e-mail: krish.mathur@ed.gov.

If you use a TDD, call the FRS, toll free, at 1-800-877-8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotope, or computer diskette) on request to the program contact

person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzellan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the function of the Assistant Secretary for Postsecondary Education.

Dated: April 24, 2009.

Daniel T. Madzellan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9-9881 Filed 4-28-09; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Amended Notice of Intent To Modify the Scope of the Environmental Impact Statement for the Abengoa Biorefinery Project Near Hugoton, KS

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Amended notice of intent.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is providing this Amended Notice of Intent to announce its intent to modify the scope of an ongoing environmental impact statement in which DOE is assessing the potential environmental impacts of a project proposed by Abengoa Bioenergy Biomass of Kansas, LLC (ABBK), to construct and operate a biomass-to-ethanol and energy facility near Hugoton, Kansas (Abengoa Biorefinery Project). DOE issued its original Notice of Intent on Aug. 25, 2008, for the proposed construction and operation of a biomass-to-ethanol and energy facility that was planned to be

integrated with a traditional grain-to-ethanol production facility on the same site.

DATES: The public scoping period begins today, and will end on May 29, 2009. DOE will consider all comments received or postmarked by May 29, 2009. DOE will consider late comments to the extent practicable. DOE will hold a public scoping meeting in Memorial Hall at the Stevens County Courthouse, 200 East 6th St., Hugoton, Kansas 67951-2606, on May 19, 2009, from 6 p.m. to 8 p.m. DOE will give equal weight to written and oral comments.

ADDRESSES: Please direct written comments on the scope of the EIS to Ms. Kristin Kerwin at the U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, Colorado, 80401. You also may contact Ms. Kerwin by telephone at 303-275-4968, by facsimile at 303-275-4790, or by e-mail at kristin.kerwin@go.doe.gov. Please label envelopes and the subject line of e-mails with the heading "Abengoa EIS Scoping Comments."

FOR FURTHER INFORMATION CONTACT: For information on the proposed project, information on how to comment, or to receive a copy of the Draft EIS when it is issued, contact Ms. Kristin Kerwin by any of the means described above under the "ADDRESSES" section.

For further information on the DOE Office of Energy Efficiency and Renewable Energy, Integrated Biorefinery Program, contact: Ms. Valri Lightner, Biomass Program Manager (Acting), U.S. Department of Energy, 1000 Independence Avenue, SW., EE-2E, Washington, DC 20585; telephone: 202-586-0937; facsimile: 202-586-1640; e-mail: eere_biomass@ee.doe.gov.

For further information on DOE's Loan Guarantee Program, contact: Mr. Daniel Tobin, Loan Guarantee Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., CF-1.3, Washington, DC 20585; telephone: 202-586-1940; facsimile: 202-586-4052; e-mail: daniel.tobin@hq.doe.gov.

For further information on the U.S. Department of Agriculture Rural Business-Cooperative Service Biorefinery Assistance Program contact: Energy Branch, Attention: Biorefinery Assistance Program, 1400 Independence Avenue, SW., Mail Stop 3225, Washington, DC 20250-3225; telephone: 202-720-1400.

For general information regarding the DOE National Environmental Policy Act (NEPA) process contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., GC-20,

Washington, DC 20585; e-mail AskNEPA@hq.doe.gov; telephone 202-586-4600; or leave a message at 1-800-472-2756.

SUPPLEMENTARY INFORMATION:

Background: In September 2007, DOE granted an initial award to ABBK to advance the conceptual design, initiate the permitting process, and support an environmental review under NEPA for ABBK's proposed biomass-to-ethanol and energy facility near Hugoton, Kansas, pursuant to section 932 of EAct 2005. DOE requires completion of the design, permitting, and environmental review obligations prior to deciding whether to co-fund the construction and operation phase of the project. The total anticipated cost of this initial work was \$37.5 million of which DOE funded 40 percent (\$15 million) and ABBK provided 60 percent (\$22.5 million). For additional information on section 932 of EAct 2005 and details regarding DOE's competitive solicitation process for commercial-scale integrated biorefineries, refer to the original NOI, (73 FR 50001 (Aug. 25, 2008)).

In DOE's original NOI, the Department announced its intent to prepare an EIS for the Abengoa Biorefinery Project. DOE indicated that it was proposing to negotiate a second financial assistance agreement for approximately \$61 million for the final design, construction, and operation of the biomass-to-ethanol and energy facility. This facility was planned to be integrated with a traditional grain-to-ethanol production facility, and the grain-to-ethanol facility was to be constructed and operated using private funds.

In January 2009, because of economic viability concerns and anticipated market conditions, ABBK notified DOE that it no longer was considering the construction and operation of the traditional grain-to-ethanol facility, and, further, was proposing to modify its biomass-to-ethanol and energy production facility by including a steam-driven turbine to generate electricity that would be supplied to the regional power grid. In addition, ABBK stated its intent to solicit loan guarantees from the DOE Loan Guarantee Program pursuant to Title XVII of EAct 2005 and from the USDA RBC Biorefinery Assistance Program pursuant to section 9003 of the 2008 Farm Bill.

EAct 2005 (Title XVII) authorizes the Department to issue loan guarantees to eligible projects that "avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases," and "employ new or

significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued." ABBK submitted a DOE loan guarantee application on February 26, 2009.

Section 9003 of the 2008 Farm Bill is intended to assist in the development and construction of commercial-scale biorefineries and the retrofitting of existing facilities using eligible technology for the development of advanced biofuels. ABBK has not submitted an application to the USDA RBC Biorefinery Assistance Program for a loan guarantee under section 9003 of the 2008 Farm Bill. After the receipt and review of an application, the RBC may decide to provide a loan guarantee to ABBK. The RBC would only do so if the application is for an eligible project that provides for the development, construction, and retrofitting of commercial biorefineries using eligible technology.

Previous Public Scoping Comments: The Department received 14 scoping comments during the public scoping period that ended on October 9, 2008, and received no comments after that date. Commenters expressed support for the proposed biorefinery project, suggested there would be no adverse environmental impacts from constructing and operating the biorefinery, requested information, or asked that DOE include certain analyses in the EIS. For example, the U.S. Department of Agriculture Natural Resources Conservation Service requested an analysis of the potential impacts from biomass production and harvesting on soils, surface and groundwater quality and quantity, air quality, and upland wildlife habitat. DOE will address these comments, as well as those submitted during the public comment period for this Amended NOI, in the Abengoa Biorefinery EIS.

Proposed Action: DOE is proposing to provide cost-shared Federal funding, only potentially, to issue a loan guarantee for the Abengoa Biorefinery Project. DOE would provide approximately \$61 million in Federal funding pursuant to section 932 of EAct 2005 to ABBK for the final design, construction, and initial operation of a commercial-scale biomass-to-ethanol and energy production facility near Hugoton, Kansas. The total estimated cost (beyond the initial award) for final design, construction, and initial operation of the facility with the new scope is approximately \$290 million.

DOE may also provide a loan guarantee pursuant to Title XVII of EPAct 2005.¹

The biomass-to-ethanol facility would use an enzymatic hydrolysis process for converting biomass feedstocks to ethanol and co-products, and a gasification technology to convert biomass to synthesis gas. The synthesis gas would be used to fire a gas-powered boiler to generate steam that ultimately would be used to produce electricity. Biomass feedstock would be supplied from waste products from the production of crops produced near the facility, and may include sorghum stubble, corn stover, switchgrass, and other opportunity feedstocks that are available.

The estimated biomass usage (dry metric tons per day) and output of ethanol (million gallons per year) for the biomass-to-ethanol facility, the project site features and location, and infrastructure requirements would remain the same as outlined in the original NOI. However, electricity produced by the steam-powered turbine would be sold to Pioneer Electric Cooperative, Inc., for supply to the regional power grid. As discussed in the original NOI, the proposed project would require a new transmission line to bring electricity to the site. The power produced by the steam-powered turbine would be supplied back to the regional power grid via this same new transmission line. The line would run from the proposed project location to the east side of Road 11, then several miles north to the existing substation.

In addition to processing an estimated 400 dry metric tons per day of biomass for the biomass-to-ethanol facility (to produce approximately 12 million gallons per year of denatured ethanol), the synthesis gas production facility would process an estimated 300 dry metric tons per day of biomass, and the electric generation portion of the facility would process and estimate 275 to 700 dry metric tons per day of biomass. The entire facility would process approximately 975 to 1400 dry metric tons per day of biomass.

Alternatives: The Department proposes to analyze the following alternatives in detail in the EIS: (1) The Abengoa Biorefinery Project as proposed by ABBK; (2) the Abengoa Biorefinery Project as proposed by ABBK without supplying electricity to the regional power grid; and (3) the No Action alternative, which assumes that none of the proposed facilities is constructed.

¹ The amount requested for the loan guarantee is not being disclosed at this time because it is business sensitive. Moreover, should DOE approve a loan guarantee, that amount may differ from the original request.

In addition, DOE plans to evaluate ranges of options for implementing the proposed project, including onsite versus offsite storage of feedstock; wet (unprotected or uncovered) versus dry (protected or covered) storage of feedstock; and smaller or larger boiler sizes. DOE will also explore potential mitigation measures that could be implemented for any of the alternatives.

Preliminary Identification of Environmental Issues: One purpose of this Amended NOI is to solicit comments and suggestions for DOE to consider in preparing the EIS. As background for public comment, the Department tentatively has identified the following list of potential environmental issues for analysis. This list identifies resource areas that may be affected by construction and operation of the proposed Abengoa Biorefinery Project and that DOE plans to analyze in the EIS. This list is not intended to be all-inclusive or to imply any predetermination of impacts. DOE welcomes comments on these resource areas and other suggestions on the scope of the EIS.

1. *Water resources:* potential impacts on surface and groundwater resources and water quality, including effects of water usage, wastewater management, and storm water management.

2. *Wetlands:* potential impacts on apparent isolated wetlands at the project site.

3. *Utility and transportation infrastructure:* requirements for delivery of feedstocks and process chemicals to the facility and distribution of products from the facility to the marketplace.

4. *Land use:* changes in land use, including the proposed site and the geographical area that will provide feedstock to the proposed facility.

5. *Local and regional air quality:* changes in air quality.

6. *Cultural resources:* including potential effects on historic and archaeological resources and American Indian tribal resources.

7. *Ecological resources:* terrestrial and aquatic plants and animals including state and Federally-listed threatened and endangered species and other protected resources.

8. *Health and safety:* including construction-related safety and process-related safety associated with handling and management of process chemicals.

9. *Noise:* potential impacts resulting from construction and operation of the proposed plant and from transportation of feedstocks, process materials, and plant byproducts.

10. *Socioeconomics:* potential socioeconomic impacts of plant construction and operation, including

effects on public services and infrastructure resulting from the influx of construction personnel and plant operating staff, and environmental justice issues.

11. *Aesthetic and scenic resources:* potential visual effects associated with plant structures and operations.

12. Cumulative impacts that result from the incremental impacts of the proposed plant when added to the other past, present, and reasonably foreseeable future activities. This may include potential impacts resulting from widespread replication of this type of technology, and from traditional grain-to-ethanol production facilities.

13. *Global climate change:* potential greenhouse gas emissions that may result from this project.

Public Scoping Process: Interested agencies, organizations, American Indian tribes, and members of the public are encouraged to submit comments or suggestions concerning the proposed content of the Abengoa Biorefinery EIS, including the range of reasonable alternatives and the potential environmental impacts. DOE invites written and oral comments and suggestions at the public scoping meeting. The public scoping period will be open until May 29, 2009.

Please send written comments to Ms. Kristin Kerwin, as described above under the "ADDRESSES" section. The public scoping meeting will be held at the location, date, and time listed in the "DATES" and "ADDRESSES" sections of this Amended NOI. This meeting will be informal. A presiding officer designated by DOE will establish procedures governing the conduct of the meeting, and DOE will provide an overview of the proposed Abengoa Biorefinery Project. DOE will not conduct the meeting as an evidentiary hearing, and those who choose to make statements will not be cross-examined by other speakers. However, DOE representatives may ask speakers questions to help ensure that DOE understands their comments or suggestions.

For advanced registration to speak at the meeting, please contact Ms. Kristin Kerwin via telephone, mail, fax, or e-mail as listed in the "ADDRESSES" section. For those persons who wish to speak but do not register in advance, DOE will provide an opportunity to speak after previously scheduled speakers have spoken, as time allows. To ensure that everyone who wishes to speak has a chance to do so, DOE will allot at least five minutes to each speaker. Persons wishing to speak on behalf of an organization should identify that organization when they request to speak.

DOE will retain a transcript of the public scoping meeting and will make the transcript available to the public for review via the Golden Field Office Online Public Reading Room at: http://www.eere.energy.gov/golden/Reading_Room.aspx. DOE will make available additional copies of the public scoping meeting transcripts during business hours at the following location: Stevens County Library, 500 S. Monroe Street, Hugoton, Kansas 67951.

Schedule: DOE expects to issue the Draft EIS in summer 2009 and will announce the availability of the Draft EIS in the **Federal Register** and local media. DOE will consider comments on the Draft EIS in preparing the Final EIS.

Interested parties who do not wish to submit comments at this time, but who would like to receive a copy of the Draft EIS, should contact Kristin Kerwin, as provided in the "ADDRESSES" section of this notice.

Other Agency Involvement: The Department has invited the U.S. Department of Agriculture to become a cooperating agency in the preparation of this EIS. DOE anticipates that the U.S. Department of Agriculture Rural Business-Cooperative Service will assist with the Department's review process and adopt the Abengoa Biorefinery EIS, to the extent practicable, to satisfy that agency's NEPA-related requirements and support its decisions under section 9003 of the 2008 Farm Bill.

Issued in Washington, DC, on April 22, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9-9716 Filed 4-28-09; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: June 23-25, 2009.

ADDRESSES: L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Office of Commercialization and Project Management, Golden Field

Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303-275-4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101-440).

Tentative Agenda: Discuss ways STEAB can support DOE's implementation of the Economic Recovery Act, support commercialization efforts for both energy efficiency and renewable energy, consider potential collaborative activities involving the State Energy Offices, and update members on other routine business matters.

Public Participation: The meeting is open to the public. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the teleconference; reasonable provisions will be made to include requested topic(s) on the agenda. Written statements may be filed with the Board either before or after the meeting. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site, <http://www.steab.org>.

Issued at Washington, DC, on April 22, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9-9762 Filed 4-28-09; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770)

requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, May 18, 2009, 1 p.m.-5 p.m.

Tuesday, May 19, 2009, 8:30 a.m.-4 p.m.

ADDRESSES: The Mulberry Inn, 601 East Bay Street, Savannah, Georgia 31401.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952-7886.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Monday, May 18, 2009

1 p.m. Combined Committee Session
5 p.m. Adjourn

Tuesday, May 19, 2009

8:30 a.m. Approval of Minutes, Agency Updates, Public Comment Session, Chair and Facilitator Updates, Administrative Committee Report, Strategic and Legacy Management Committee Report, Public Comment Session
12 p.m. Lunch Break
1 p.m. Waste Management Committee Report, Facility Disposition and Site Remediation Committee Report, Nuclear Materials Committee Report, Public Comment Session
4 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, May 18, 2009.

Public Participation: The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gerri Flemming at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the