

restoration structures, and construct, bury new and/or existing pipeline. It provides for a range of alternate actions that may be selected from to achieve desired conditions in an acceptable timeframe. This approach is known as "Adaptive Management." Some grazing practices would be changed to resolve grazing related resource issues.

Successful Adaptive Management requires timely monitoring of resource conditions and trends. The Proposed Action also includes a monitoring plan for each allotment designed to focus on specific areas with livestock related resource problems. If monitoring results indicate that resource problems persist, adaptive management options are identified that would be implemented in cooperation with each permittee to effect improvement in resource conditions.

#### Possible Alternatives

The Current Management Alternative would not change existing permitted livestock grazing. The No Grazing Alternative would eliminate any livestock grazing on the project area.

#### Responsible Official

Robert J. Thompson, District Ranger, Mystic Ranger District, Black Hills National Forest, 8221 South Highway 16, Rapid City, SD 57702.

#### Nature of Decision To Be Made

The decision to be made is whether to continue to permit livestock grazing on all, part, or none of these allotments and, if so, under what terms and conditions to ensure that desired condition objectives are met, or that movement occurs toward those objectives.

#### Preliminary Issues

Anticipated issues include: Support and opposition to livestock grazing; impacts of livestock grazing on wildlife habitat, riparian areas, and streambank stability.

#### Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Comments and input regarding the proposal will be received via direct mailing from the public, other groups, and agencies during the initial public comment period in June of 2009. Comments submitted based on this NOI will be most useful if received within 30 days from the date of this notice. Response to the Draft EIS will be sought from the interested public beginning in August 2009.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: June 4, 2009.

**Craig Bobzien,**

*Forest Supervisor, Black Hills National Forest.*

[FR Doc. E9-13690 Filed 6-11-09; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. APHIS-2008-0121]

#### Notice of Availability of an Evaluation of the Highly Pathogenic Avian Influenza Subtype H5N1 Status of Saxony, Germany

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

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has prepared an evaluation of the animal health status of Saxony, Germany, relative to the H5N1 subtype of highly pathogenic avian influenza (HPAI). The evaluation presents our assessment of the HPAI H5N1 detection, control, and eradication measures in place in Saxony, Germany, during an outbreak of HPAI in 2008, as well as our assessment of the present status of Saxony, Germany, with respect to HPAI subtype H5N1. We are making this evaluation available to the public for review and comment. If, after the close of the comment period, APHIS can identify no additional risk factors that would indicate that domestic poultry in Saxony, Germany, continue to be affected with HPAI H5N1, we would conclude that the importation of live birds, poultry carcasses, parts of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from the affected region of Saxony, Germany, presents a low risk of introducing HPAI H5N1 into the United States.

**DATES:** We will consider all comments that we receive on or before July 13, 2009.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0121> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS-2008-0121, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0121.

*Reading Room:* You may read any comments that we receive on the evaluation in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Julia Punderson, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737-1231; (301) 734-4356.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) has the authority to prohibit or restrict the importation into the United States of animals, animal products, and other articles in order to prevent the introduction of diseases and pests into the U.S. livestock and poultry populations.

Highly pathogenic avian influenza (HPAI) is a zoonotic disease of poultry. The H5N1 subtype of HPAI is an extremely infectious and fatal form of the disease. HPAI can strike poultry quickly without any warning signs of infection and, once established, can spread rapidly from flock to flock. HPAI viruses can also be spread by manure, equipment, vehicles, egg flats, crates, and people whose clothing or shoes

have come in contact with the virus. HPAI viruses can remain viable at moderate temperatures for long periods in the environment and can survive indefinitely in frozen material. The H5N1 subtype of HPAI has been of particular concern because it has crossed the species barrier and caused disease in humans.

On October 9, 2008, the German Federal Ministry of Consumer Protection, Food and Agriculture (BMVEL) reported an outbreak of HPAI H5N1 in a single mixed-species flock in Marfersdorf, located in the district of Görlitz in the Federal State of Saxony following the identification of HPAI H5N1 in a wild bird on a nearby lake.

The restrictions put in place by the European Commission on October 9, 2008, in response to that limited outbreak were lifted on November 13, 2008, following extensive surveillance and epidemiologic investigations. In a document titled, "APHIS' Evaluation of the Status of High Pathogenicity Avian Influenza H5N1 (HPAI H5N1) in Saxony, Germany" (February 2009), we present the results of our evaluation of the status of HPAI H5N1 in domestic poultry in Saxony, Germany, in light of the actions taken by German authorities since the 2008 outbreak, and document our analysis of the risk associated with allowing the importation of birds, poultry, and poultry products from the region of Saxony, Germany, into the United States in the aftermath of the 2008 outbreak.

Based on the evaluation, we have determined that the BMVEL was able to effectively control and eradicate HPAI H5N1 in their domestic poultry populations and that the German authorities have adequate control measures in place to rapidly identify, control, and eradicate the disease should it be reintroduced into the country in either wild birds or domestic poultry.

We are making the evaluation available for public review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice. The evaluation may be viewed on the *Regulations.gov* Web site or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the evaluation by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the evaluation when requesting copies.

If, after the close of the comment period, APHIS can identify no

additional risk factors that would indicate that domestic poultry in Saxony, Germany, continues to be affected with HPAI H5N1, we would conclude that the importation of live birds, poultry carcasses, parts of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from Saxony, Germany, presents a low risk of introducing HPAI H5N1 into the United States.

**Authority:** 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 8th day of June 2009.

**Kevin Shea,**

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

[FR Doc. E9–13840 Filed 6–11–09; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

#### Notice of Funding Availability (NOFA) for Repowering Assistance Payments to Eligible Biorefineries

**AGENCY:** Rural Development-Energy Division, Program Branch, USDA.

**ACTION:** Notice.

**SUMMARY:** This Notice announces the intention of the USDA ("the Agency") to make payments to eligible biorefineries to encourage the use of renewable biomass as a replacement fuel source for fossil fuels used to provide process heat or power in the operation of these eligible biorefineries. This program is authorized under Title IX, Section 9001, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

**DATES:** Applications for participating in this program must be received between July 1, 2009 and November 1, 2009.

The comment period for information collection under the Paperwork Reduction Act of 1995 continues through August 11, 2009. Comments on the paperwork burden must be received by this date to be assured of consideration.

**ADDRESSES:** Application materials may be obtained by contacting USDA, Rural Development-Energy Division, Program Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225.

**FOR FURTHER INFORMATION CONTACT:** For further information on this payment program, please contact USDA, Rural Development-Energy Division, Program

Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225. Telephone: 202–720–1400.

#### SUPPLEMENTARY INFORMATION:

On May 5, 2009, the President issued a Presidential Directive to Secretary of Agriculture Thomas R. Vilsack to aggressively accelerate the investment in and production of biofuels (published in the *Federal Register* on May 7, 2009 (74 FR 21531–21532)). Secretary Vilsack also announced that he will help lead an unprecedented interagency effort to increase America's energy independence and spur rural economic development.

The Presidential directive requests that Secretary Vilsack take steps to the extent permitted by law to expedite and increase production of and investment in biofuel development efforts by, among other things, making renewable energy financing opportunities from the 2008 Farm Bill available within 30 days, which includes guidance and support to encourage biorefineries to replace the use of fossil fuels in plant operations by installing new biomass energy systems or producing new energy from renewable biomass.

#### Administrative Procedure Act Statement

This NOFA is being issued without advance rulemaking or public comment. The Administrative Procedure Act ("APA", 5 U.S.C. 553), has several exemptions to rulemaking requirements. Among them is an exemption for matters relating to federal benefits, but under the provisions of the "Statement of Policy of the Secretary of Agriculture effective July 24, 1971," issued by Secretary Hardin in 1971 (36 FR 13804 (the "Hardin Memorandum")), the Department will normally engage in rulemaking related to federal benefits despite that exemption. However, the Hardin Memorandum does not waive certain other APA-contained exemptions, in particular the "good cause" exemption found at 5 U.S.C. 553(b)(3)(B), which allows effective government action without rulemaking procedures where withholding the action would be "impracticable, unnecessary, or contrary to the public interest." The Hardin memorandum specifically provides for the use of the "good cause" exemption, albeit sparingly, when a substantial basis for so doing exists, and where, as will be described more fully below, that substantial basis is explained.

USDA has determined, consistent with the APA and the Hardin