

## Environmental Issues

This notice is to inform agencies and the public of Western's and RUS' Federal actions, and the proposed Project, and to solicit comments and suggestions for consideration in preparing the EIS. To help the public frame its comments, this notice contains a list of potential environmental issues that Western and RUS have tentatively identified for analysis. These issues include:

1. Impacts on protected, threatened, endangered, or sensitive species of animals or plants;
2. Impacts on avian and bat species;
3. Impacts on land use, recreation, and transportation;
4. Impacts on cultural or historic resources and tribal values;
5. Impacts on human health and safety;
6. Impacts on air, soil, and water resources (including air quality and surface water impacts);
7. Visual impacts; and
8. Socioeconomic impacts and disproportionately high and adverse impacts to minority and low-income populations.

This list is not intended to be all-inclusive or to imply any predetermination of impacts. Environmental issues associated with Western's action, RUS' action, and PrairieWinds' proposed Project will be addressed separately in the EIS. Western and RUS invite interested parties to suggest specific issues within these general categories, or other issues not included above, to be considered in the EIS.

## Public Participation

Public participation and full disclosure are planned for the entire EIS process. The EIS process will include public scoping open house meetings and a scoping comment period to solicit comments from interested parties; consultation and involvement with appropriate Federal, State, local, and tribal governmental agencies; public review and a hearing on the draft EIS; publication of a final EIS; and publication of separate Records of Decision by Western and RUS, currently anticipated in 2010. Additional informal public meetings may be held in the proposed Project areas, if public interest and issues indicate a need.

The public scoping period begins with publication of this notice in the **Federal Register** and closes May 15, 2009. The purpose of the scoping meetings is to provide information about Western's Federal action, RUS's Federal action, and the proposed

Project, display maps, answer questions, and take written comments from interested parties.

Western and RUS will hold open house public scoping meetings in Plankinton, South Dakota and Winner, South Dakota as noted above. Attendees are welcome to come and go at their convenience and to speak one-on-one with Project representatives and agency staff. The public will have the opportunity to provide written comments at the meeting. In addition, attendees may provide written comments by letter, fax, e-mail, or through the project's Web address.

To be considered in defining the scope of the EIS, comments should be received by the end of the scoping period. Anonymous comments will not be accepted.

Dated: March 30, 2009.

**Timothy J. Meeks,**  
*Administrator.*

Dated: March 26, 2009.

**Mark S. Plank,**  
*Director, Engineering and Environmental Staff, Rural Utilities Service.*

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**BILLING CODE 6450-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8789-8; EPA-HQ-OEI-2007-1152]

### Amendment to the Toxic Substances Control Act Confidential Business Information Records Access System, EPA-20

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Pollution Prevention and Toxics is giving notice that it proposes to amend the "Toxic Substance Control Act Confidential Business Information Records Access System" to "Confidential Business Information Tracking System (CBITS)" to correct the official name of the system of record notice (SORN), system location and system manager.

**DATES:** Persons wishing to comment on this system of records notice must do so by May 18, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-2007-1152, by one of the following methods:

- <http://www.regulations.gov>: Follow the online instructions for submitting comments.

- *E-mail:* [oei.docket@epa.gov](mailto:oei.docket@epa.gov)

- *Fax:* 202-566-1752.

- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* OEI Docket, EPA/DC, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OEI-2007-1152. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either

electronically in <http://www.regulations.gov> or in hard copy at the OEI Docket, EPA/DC, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:**  
Tony Cheatham, 202-564-8594.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

The "Confidential Business Information Tracking System (CBITS)" tracks documents received by the Environmental Protection Agency (EPA), Office of Pollution Prevention and Toxics (OPPT) as well as all information pertaining to the EPA, the contractors, and other government staff members that request access to Toxic Substances Control Act (TSCA) Confidential Business Information (CBI). CBITS has a major security module that tracks information on federal and contractor personnel, contractors, and other government staff members that have been granted approval to access TSCA CBI. The security module also tracks EPA OPPT contracts, contracting companies, and other off-site classified CBI locations. The system functionality allows an approved OPPT staff member or CBITS data base administrator (DBA) to create and modify profiles on federal and contractor personnel and contractor site information. Access to CBITS is limited to federal and contractor personnel responsible for the systems operations and management.

In 1986, CBITS was developed to process and track TSCA CBI data and users approved to access CBI data. The security module was created to validate the user TSCA CBI security clearance in connection with reviewing CBI materials. The security module contained vital information such as name, social security number (SSN), company/contractor identification, contractor site, and agency information that was required from the TSCA CBI Access Request, Agreement, and Approval Form, EPA Form 7740-6 (Rev. 10-03) and TSCA CBI ADP Registration Form, EPA Form 7740-25 (10-92). The SSN was a required data field in the system linked to user access of TSCA CBI and user profile reports. In October 2003, the EPA Form 7740-6 was revised to require the user to provide a 9 digit number replacing the SSN. Staff records

prior to the revision contain the SSN for active and historical records.

CBITS is maintained in a secured storage facility at EPA Headquarters by OPPT in Washington, DC where only authorized and TSCA CBI cleared personnel, EPA staff or contractor's that have rights to manage the system or have access are allowed. User profiles can only be accessed by the CBITS DBA and authorized system users that maintain the security module and personnel data. The process of accessing CBITS information is compliant with TSCA Security procedures, FISCAM 3.2 and NIST 800-18. All precautions and guidelines are met so that the confidentiality of the data is not compromised.

Dated: March 23, 2009.

**Linda A. Travers,**  
*Acting Assistant Administrator and Chief Information Officer.*

**EPA-20**

**SYSTEM NAME:**

Confidential Business Information Tracking System.

**SYSTEM LOCATION:**

Office of Pollution Prevention and Toxics, Information Management Division, Environmental Protection Agency, EPA East Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

EPA and other Federal agency employees and Office of Pollution Prevention and Toxics contractor employees who are or have ever been authorized for access to Toxic Substances Control Act Confidential Business Information (TSCA CBI).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains basic identification information such as name, EPA identification card number, date and place of birth, office of contractor for which the individual works and telephone number. In addition, the system contains information pertinent to TSCA CBI access such as security briefing date, date added to system, date deleted from system and type of access authorized. The system no longer collects SSNs but maintains those previously collected.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM (INCLUDES ANY REVISIONS OR AMENDMENTS):**

Toxic Substances Control Act, 15 U.S.C. 2601 et seq.

**PURPOSE(S):**

To maintain a record of those persons cleared for access to TSCA CBI and to maintain the security of TSCA CBI.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:**

General routine uses A, B, C, D, E, F, G, H, K, and L apply to this system. Records may also be disclosed:

1. To other Federal agencies when they possess TSCA CBI and need to verify clearance of EPA.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Current records are maintained in a computer database. Some older records are maintained in hard copy files.

**RETRIEVABILITY:**

From the computer database by addressing any type of data contained in the database, including name. From alphabetized hard copy files by name.

**SAFEGUARDS:**

Computer records are maintained in a secure, password protected computer system. Paper records are maintained in safes. All records are maintained in secure, access-controlled areas or buildings.

**RETENTION AND DISPOSAL:**

Information in this system is maintained and updated for so long as individuals identified in the system are authorized for access to TSCA CBI. EPA Records Schedule 624, Title: Confidential Business Information Access, NARA Disposal Authority: N1-412-03-20

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Information Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, EPA East Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

**NOTIFICATION PROCEDURES:**

Any individual who wants to know whether this system of record contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the Freedom of Information Office, ATTENTION: Privacy Act Officer.

**ACCESS PROCEDURE:**

Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document.

Additional identification procedures may be required in some instances.

**CONTESTING PROCEDURE:**

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are set out in 40 CFR Part 16.

**RECORD SOURCE CATEGORIES:**

Record subjects provide identification information. EPA personnel add information about dates and type of access authorized.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:**

None.

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**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-8789-9]

**Notice of Nationwide Waiver of Section 1605 (Buy American Requirement) of American Recovery and Reinvestment Act of 2009 (ARRA) for Projects With Debt Incurred on or After October 1, 2008 and Before February 17, 2009 That Are Refinanced Through the Clean or Drinking Water State Revolving Funds Using Assistance Provided Under ARRA**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA is hereby granting a nationwide waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) (public interest waiver) for eligible projects for which debt was incurred on or after October 1, 2008 and before February 17, 2009, the date of enactment of ARRA. This action permits the use of non-domestic iron, steel, and manufactured goods in such projects funded by ARRA that may otherwise be prohibited under section 1605(a).

**DATES:** *Effective Date:* April 1, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Cynthia Dougherty, Director, Office of Ground Water and Drinking Water, (202) 564-3750 or Jim Hanlon, Director, Office of Wastewater Management, (202) 564-0748, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a nationwide waiver of the requirements of section 1605(a) of

Public Law 111-5, Buy American requirements, for eligible projects for which a Clean or Drinking Water State Revolving Fund (SRF) has concluded or will conclude an assistance agreement using ARRA funds to refinance a debt incurred on or after October 1, 2008, and before February 17, 2009.

The basis for the nationwide waiver is the authorization in the SRF appropriations heading of ARRA for refinancing using ARRA funds of certain debt obligations, as follows:

That notwithstanding section 603(d)(2) of the Federal Water Pollution Control Act and section 1452(f)(2) of the Safe Drinking Water Act, funds may be used to buy, refinance or restructure the debt obligations of eligible recipients only where such debt was incurred on or after October 1, 2008.

In the ordinary course of SRF business, refinancing of any existing debt obligations of assistance recipients eligible for refinancing is an allowable type of assistance under the sections referenced in the ARRA provision above, largely irrespective of when the debt was incurred. As the purpose of the SRF provisions of ARRA was to stimulate economic recovery by funding current infrastructure construction, the purpose of this ARRA provision was not to provide more advantageous financing for any projects whose construction had substantially already occurred. Rather, with the House of Representatives' passage of H.R. 7110 in late September 2008 giving notice of Congress' strong interest in economic recovery legislation, this refinancing provision was intended to include within the favorable financing terms of ARRA, eligible projects undertaken after that time (and within the Fiscal Year 2009 timeframe of ARRA as a supplemental appropriation) in anticipation of ARRA.

Moreover, as the debate on the legislation that ultimately became ARRA continued through November and December, 2008 into January and February, 2009, States and utilities increasingly reported that action on eligible projects that State SRFs wished to support and for which there was available funding under the base SRF program were being deferred, in the hope of obtaining more advantageous financing terms from the ARRA appropriation. In part because this deferral of financing and construction for genuinely "shovel ready" projects was in direct conflict with the most fundamental economic recovery purposes of ARRA, Congress adopted this refinancing provision to enable eligible projects which began creating jobs after October 1, 2008, to receive ARRA funding to recognize and support those projects' contribution to economic

recovery. This is confirmed in the declaration of the Joint Explanatory Statement of the Conference (H. Rpt. 111-16, at 444) that "[t]o ensure that funds are used to create jobs, the bill also limits the use of the revolving funds to buy, refinance, or restructure debt incurred prior to October 1, 2008."

The proponents of projects that fall within the scope of this SRF refinancing provision for ARRA had, in order to obtain the initial financing, specified designs which may include elements which have limited or often no domestic availability, many may have solicited bids from prospective contractors, and some subsequently awarded construction contracts, and in some cases began construction, prior to the February 17, 2009, enactment of ARRA. All of these actions were in fulfillment of Congress' intention in passing ARRA and in particular, adopting this SRF refinancing provision, to create jobs and spur economic recovery "by commencing activities and expenditures as expeditiously as possible." (See ARRA Section 3.)

Moreover, in all cases of initial financing prior to February 17, the project proponents were proceeding in good faith and without fair notice as to the existence and statutory scope of any Buy American requirement.

The imposition of ARRA's Buy American requirements on projects eligible for SRF assistance whose assistance applicants had already obtained financing on or after October 1, 2008 and prior to February 17, 2009, the date on which those requirements were imposed, would in all cases entail time-consuming delay and thus displace the "shovel ready" status of these projects. This would frustrate Congress' specific and explicit intent to allow for the use of ARRA funds to refinance those projects through the SRFs, as well as for expeditious construction generally. ARRA Section 1605(b)(1) authorized the Administrator to waive the requirements of Section 1605(a) in any case or category of cases in which she finds that applying subsection (a) would be inconsistent with the public interest.

Therefore, for the foregoing reasons, imposing ARRA's Buy American requirements for the category of cases described herein is not in the public interest. This supplementary information constitutes the "detailed written justification" required by Section 1605(c) for waivers "based on a finding under subsection (b)."

**Authority:** Public Law 111-5, section 1605.