



Department of Energy
Washington, DC 20585

**ASSISTANT SECRETARY OF ENERGY
FOR ENERGY EFFICIENCY AND RENEWABLE ENERGY**

MEMORANDUM OF DECISION

SUBJECT: Determination of inapplicability (waiver) of section 1605 of the American Reinvestment and Recovery Act of 2009 (Recovery Act Buy American provisions) to EERE-funded projects for (1) Class 125 Iron (6", 8" and 12") Ball Valves (Standard: MSS SP-72, CWP Rating: 200 psig, Ends: flanged, Seats: PTFE or TFE; ASTM A126); (2) Low Temperature Thermostat (range of 15-55 Fahrenheit, automatic reset); (3) Two-stage, steam heated absorption chillers rated at 450 tons; and (4) 4 Watt 325 lumen dock lamp LED replacement bulbs.

Under the authority of American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. 111-5, section 1605(b)(2), the head of a Federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality ("nonavailability"). The authority of the Secretary of Energy to make all inapplicability determinations was re-delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act, in Redlegation Order No. 00-002.01E, dated April 25, 2011. Pursuant to this delegation the Acting Assistant Secretary, EERE, has concluded that: (1) Class 125 Iron (6", 8" and 12") Ball Valves (Standard: MSS SP-72, CWP Rating: 200 psig, Ends: flanged, Seats: PTFE or TFE; ASTM A126); (2) Low Temperature Thermostat (range of 15-55 Fahrenheit, automatic reset); (3) Two-stage, steam heated absorption chillers rated at 450 tons; and (4) 4 Watt 325 lumen dock lamp LED replacement bulbs are not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The above items, when used on eligible EERE Recovery Act-funded projects, qualify for the "nonavailability" waiver determination.

EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability determinations.

The MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to 'scout' for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver requests for the four products in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The MEP reported that their scouting process did not locate any domestic manufacturers for these exact or equivalent items.

In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP's scouting efforts, including utilizing the solar experts employed by the Department of Energy's National Renewable Energy Laboratory. EERE's research efforts confirmed the MEP findings that the goods included in this waiver are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination is also informed by the inquiries and petitions to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers for these items have been unsuccessful.

Specific technical information for the manufactured goods included in this non-availability determination is detailed below:

- 1) Class 125 Iron (6", 8" and 12") Ball Valves (Standard: MSS SP-72, CWP Rating: 200 psig, Ends: Flanged, Seats: PTFE or TFE)

Neither MEP or DOE was able to locate US made ball valves that meet project specifications because there are no US manufacturers of ball valves with the specified cast iron (ASTM A126), specific to valve pressure parts, pipe fittings, and flanges.

- 2) Low Temperature Thermostat (range of 15-55 Fahrenheit, automatic reset)

This expands a waiver granted in November 2010 to include thermostats with a manual reset. There were no US manufacturers located by DOE, MEP or a number of trade groups. The electric low temperature detection thermostats are

especially suited for sensing low temperature conditions to avoid freeze-up of hydronic heating coils, cooling coils, liquid heating pipes and similar applications. Typically, the switch opens an electrical circuit to stop the supply fan motor when the temperature at the sensing element falls below the setting of the instrument.

3) Two-stage, steam heated absorption chillers rated at 450 tons

There are US manufacturers of chillers, however, not that meet these specifications. MEP, DOE and a number of trade organizations were unable to locate a domestic manufacturer.

4) 4 Watt 325 lumen dock lamp LED replacement bulbs.

The bulb is designed to fit into existing dock lighting sockets, but utilizes high efficiency LEDs rather than the existing bulb technology. MEP and DOE were unable to locate any other manufacturer making a compatible bulb, other than the foreign manufacturer proposed by the applying grantee.

In light of the foregoing, and under the authority of section 1605(b)(2) of Public Law 111-5 and Redesignation Order 00-002-01E, with respect to Recovery Act projects funded by EERE, I hereby issue a "determination of inapplicability" (a waiver under the Recovery Act Buy American provision) for: (1) Class 125 Iron (6", 8" and 12") Ball Valves (Standard: MSS SP-72, CWP Rating: 200 psig, Ends: flanged, Seats: PTFE or TFE; ASTM A126); (2) Low Temperature Thermostat (range of 15-55 Fahrenheit, automatic reset); (3) Two-stage, steam heated absorption chillers rated at 450 tons; and (4) 4 Watt 325 lumen dock lamp LED replacement bulbs.

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of his responsibility. Consequently, this waiver applies only to EERE projects carried out under the Recovery Act.

Furthermore, I reserve the right to revisit and amend this determination based on new developments or changes in the domestic manufacturing capacity for these four product types.



Henry C. Kelly
Acting Assistant Secretary
Energy Efficiency and Renewable Energy
U.S. Department of Energy

Date: