



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: Pre-insulated district heating pipe systems consisting of thin wall thickness steel pipe meeting the EN13941 standard, bonded to polyurethane foam insulation, bonded to an HDPE jacket, such that all the components operate as a single pipe (including two 1.5 mm squared area copper wires embedded in the insulation for leak detection and location); pre-insulated steel fittings with the same characteristics as the pre-insulated pipe; and pre-insulated maintenance free ball valves with an all welded valve body and a stainless steel valve ball in a spring loaded teflon seat, having the same insulation and jacket characteristics as the pipe.

Under the authority of American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. No. 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 Redelegation Order No. 00-002.01E, dated April 25, 2011. Pursuant to this delegation the Acting Assistant Secretary, EERE, has concluded that the following item, when used on eligible EERE Recovery Act-funded projects, qualify for the "nonavailability" waiver determination: Pre-insulated district heating pipe system consisting of thin wall thickness steel pipe meeting the EN13941 standard, bonded to polyurethane foam insulation, bonded to an HDPE jacket, such that all the components operate as a single pipe (including two 1.5 mm squared area copper wires embedded in the insulation for leak detection and location); pre-insulated steel fittings with the same characteristics as the pre-insulated pipe; and pre-insulated maintenance free ball valves with an all welded valve body and a stainless steel valve ball in a spring loaded teflon seat, having the same insulation and jacket characteristics as the pipe.

EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the item 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 product 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 this exact or equivalent item.

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 the 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) Pre-insulated district heating pipe system consisting of thin wall thickness steel pipe meeting the EN13941 standard, bonded to polyurethane foam insulation, bonded to an HDPE jacket, such that all the components operate as a single pipe (including two 1.5 mm squared area copper wires embedded in the insulation for leak detection and location); pre-insulated steel fittings with the same characteristics as the pre-insulated pipe; and pre-insulated maintenance free ball valves with an all welded valve body and a stainless steel valve ball in a spring loaded teflon seat, having the same insulation and jacket characteristics as the pipe.

Pre-insulated hot water district energy piping manufactured as a system to meet quality standards (EN Standards, ISO 9001, and ISO 14001) that test all aspects of the individual components (insulation cell structure/water absorption/compression resistance) plus ensure compliance of the finished system to five rigorous tests: axial and tangential shear strength, aged shear strength, creep and impact resistance. This degree of diligence is not imposed on thermal distribution piping manufactured as individual parts, and as a result products produced as a system to meet the above referenced standards better predict overall long term behavior of the system under sustained high temperature, resulting in lower life cycle cost and greater system efficiency. Because there is not a US manufacturer who makes a complete system, the components (pre-insulated valves, fittings, bends, etc.) of a hot water district energy system, have not been tested together to ensure that the entire system behaves in the same manner.

In light of the foregoing, and under the authority of section 1605(b)(2) of Pub. L. No. 111-5 and Redelegation 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: Pre-insulated district heating pipe system consisting of thin wall thickness steel pipe meeting the EN13941 standard, bonded to polyurethane foam insulation, bonded to an HDPE jacket, such that all the components operate as a single pipe (including two 1.5 mm squared area copper wires embedded in the insulation for leak detection and location); pre-insulated steel fittings with the same characteristics as the pre-insulated pipe; and pre-insulated maintenance free ball valves with an all welded valve body and a stainless steel valve ball in a spring loaded teflon seat, having the same insulation and jacket characteristics as the pipe.

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 this product type.



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

Date: 3/27/2012