



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) 400amp Dual Element Time-Delay Fuses for electric vehicle supply equipment (EVSE) charging station; (2) Video imaging card rack mounted boards for vehicle presence and data detection; (3) 20-ton split system heat pump that meets a minimum static pressure requirement of 3.0 inches of water column. (only where the 3.0 water column is a requirement of the system); and (4) network manager for conversion of proprietary protocol- Staefa brand system- to a non-proprietary open source protocol.

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) 400amp Dual Element Time-Delay Fuses for electric vehicle supply equipment (EVSE) charging station; (2) Video imaging card rack mounted boards for vehicle presence and data detection; (3) 20-ton split system heat pump that meets a minimum static pressure requirement of 3.0 inches of water column. (only where the 3.0 water column is a requirement of the system); and (4) network manager for conversion of proprietary protocol- Staefa brand system- to a non-proprietary open source protocol. 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 six 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) 400amp Dual Element Time-Delay Fuses for electric vehicle supply equipment (EVSE) charging station

These are used in the installation of EV charging stations. Two national trade organizations representing American manufacturers of this equipment verified that these are not manufactured in the US. Further, MEP did not identify a potential manufacturer.

- 2) Video imaging card rack mounted boards for vehicle presence and data detection
These card racks are installed into existing traffic systems and are not manufactured domestically. Neither transportation manufacturing trade associations nor MEP identified any US manufacturer of this product.

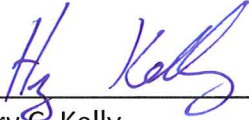
- 3) 20-ton split system heat pump that meets a minimum static pressure requirement of 3.0 inches of water column. (only where the 3.0 water column is a requirement of the system)
This waiver is limited to systems that require compatibility with this extremely high water column. No US manufacturers (four manufacturers of this type of equipment were identified by EERE and MEP and contacted) were able to meet this need.

- 4) network manager for conversion of proprietary protocol- Staefa brand system to a non-proprietary open source protocol
For use where a Staefa system was installed previously, and where utilizing a domestic control module would mean that the existing energy management controls would have to be removed and a new energy management controls system would have to replace the existing Staefa system. This product allows the grantee to convert from the proprietary protocol to an open-source protocol- providing a wider variety of controls in the future.
In these cases, the grantee is unable to use a domestic control module because the existing system runs off of a proprietary communication protocol (rather than LON or BACnet), and the entire system would have to be replaced to install additional controllers. Trade organizations, DOE and MEP all agreed that this was the only controller capable of properly interfacing with this protocol.

In light of the foregoing, and under the authority of section 1605(b)(2) of Public Law 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: (1) 400amp Dual Element Time-Delay Fuses for electric vehicle supply equipment (EVSE) charging station; (2) Video imaging card rack mounted boards for vehicle presence and data detection; (3) 20-ton split system heat pump that meets a minimum static pressure requirement of 3.0 inches of water column. (only where the 3.0 water column is a requirement of the system); and (4) network manager for conversion of proprietary protocol- Staefa brand system- to a non-proprietary open source protocol.

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 three product types.



Date: 1/23/2012

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