



American Recovery and Reinvestment Act of 2009 (“ARRA”)
Buy American Provisions

Iwaki America Position
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Section 1605 of the American Recovery and Reinvestment Act of 2009 (“ARRA”) (commonly known as the United States (“U.S.”) government economic stimulus package) contains “Buy American” provisions requiring stimulus funds to be spent on American-made manufactured products, with certain exceptions.

Iwaki America addressed this with the company’s attorneys because municipal water and wastewater projects are large recipients of stimulus funds and these projects require control and pumping systems.

The U.S. Government has not published final regulations. Therefore, our conclusions are based on legal interpretations of the ARRA, guidelines published by the U.S. Office of Management and Budget (“OMB”) and case-by-case U.S. Customs and Border Patrol “CBP” decisions

Walchem controller and sensor products with the exception of chlorine and chlorine dioxide sensors are designed and manufactured in the U.S. While these products incorporate some imported components, the source of the components is outside of the scope of the ARRA. Chlorine and chlorine dioxide sensors sold with controllers can be considered controller components. Therefore, we can conclude that Walchem controller and sensor products meet the Buy American provisions of the ARRA.

While most Iwaki pump products including metering pumps sold under the Walchem or Iwaki brands by Iwaki America are assembled in the U.S. from components imported from Japan, it is unlikely that the percentage of value added in the U.S. assembly processes alone is sufficient to qualify these products as “manufactured” in the U.S. under the terms of the ARRA, guidance published by the U.S. OMB and based on earlier case-by-case U.S. CBP decisions. However:

1. Japan and the U.S. are parties to a “World Trade Organization Government Procurement Agreement”. As such, Japan meets the definition of a “designated country” in the U.S. (federal) Government Procurement Code. Per Section 1605(d) of the ARRA “the (Buy American) restrictions of the ARRA shall not be applied where the manufactured goods used in the project are from a Party to an international agreement“ (a designated country) “that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services.” It should be noted that recipients of ARRA funds are only obligated to honor these provisions for projects over \$7,443,000. Finally, for any state projects over \$7,443,000, the Iwaki supplier must verify that the individual state has acceded to the Government Procurement Agreement.
2. Independent of 1., above, Iwaki pumps are not generally sold individually to end user projects that are recipients of ARRA funds. Rather, these pumps are generally sold as components of pumping systems. As such, the pumps would not be covered by the Buy American provisions of the ARRA provided the overall U.S. content of the production processes of the pumping systems were substantial.