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**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA-R07-OW-2010-0898; FRL-9236-7]

### Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Central Iowa Water Association

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

**ACTION:** Notice.

**SUMMARY:** EPA is hereby granting a waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Central Iowa Water Association (CIWA) for the purchase of ORION Water Meter Monitor with Leak Detection Indicator in-home water meter monitors manufactured in Malaysia by Eastech, Inc., under license from Badger Meter, Inc., located in Milwaukee, Wisconsin. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The waiver applicant states that the Badger in-home water meter monitors are the only devices that are compatible with the water meter heads installed by the CIWA. The Regional Administrator is making this determination based on the review and recommendations of the Drinking Water

State Revolving Fund (DWSRF) staff. CIWA has provided sufficient documentation to support their waiver request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA.

**DATES:** *Effective Date:* November 30, 2010.

**FOR FURTHER INFORMATION CONTACT:** Christopher Simmons, Environmental Engineer, Water Wetlands and Pesticides Division (WWPD), Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, KS 66101, telephone number (913) 551-7237; *e-mail address:* [simmons.christopher@epa.gov](mailto:simmons.christopher@epa.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Section 1605(c), EPA hereby provides notice that we are granting a project waiver of the requirements of Section 1605(a) of Public Law 111-5, Buy American requirements, to the Central Iowa Water Association for the purchase of a non-domestically manufactured ORION Water Meter Monitor with Leak Detection Indicator in-home water meter monitors manufactured in Malaysia by Eastech, Inc., under license from Badger Meter, Inc., located in Milwaukee, Wisconsin, to meet CIWA's project specifications.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The CIWA drinking water improvement project is proposing the use of a non-domestically manufactured water meter monitor. This project will improve efficiency and promote water conservation by providing customers with a single meter reading platform and in-home monitoring devices. Residential water meters have been

supplied and utilized by Sensus since the late 1970's. The current Sensus water meters are now aged and obsolete. The Sensus meter technology has been discontinued and an in home monitoring unit is not available for the North American market.

The Drinking Water State Revolving Fund (DWSRF) staff has reviewed this waiver request and has determined that the supporting documentation provided by the CIWA establishes both a proper basis to specify a particular manufactured good, and that there is no domestic manufactured good currently available. The information provided is sufficient to meet the following criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009 Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

EPA has also evaluated CIWA's request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says "the award official may deny the request." For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, CIWA's waiver request indicates that the Badger in-home water meter monitors are the only devices compatible with the Badger meter transmitter system and that no other water meter monitors are capable of meeting satisfactory quality to meet the technical specifications. The existing installed Sensus meter technology has been discontinued and Sensus has indicated that an equivalent in home monitoring unit is not available from Sensus for the North American market at this time. CIWA was not informed that the water meter monitor was not American made until the point of signing a final purchase agreement, after the contract was signed. There is no

indication that CIWA failed to request a waiver in order to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products available that meet the project specifications. Therefore, EPA will consider CIWA's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by CIWA and no loss by the government due to the late request.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring potential SRF eligible recipients, such as the Central Iowa Water Association to revise their design standards and specifications as well as their construction schedule. There are no domestic manufacturers that can provide a compatible water meter monitor that meets the specifications of this drinking water improvement project. To delay this construction would directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs.

The April 28, 2009 EPA HQ Memorandum, "Implementation of Buy American provisions of Public Law 111-5, the 'American Recovery and Reinvestment Act of 2009'" ("Memorandum"), defines *reasonably available quantity* as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design." The same Memorandum defines "satisfactory quality" as "the quality of steel, iron or manufactured good specified in the project plans and designs."

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that this manufactured good was not available from a producer in the United States, the CIWA is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5. This waiver permits use of ARRA funds for the purchase of a non-domestic manufactured ORION Water Meter Monitors with Leak Detection Indicator documented in the CIWA's waiver request submittal dated June 24, 2010.

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.

Dated: November 30, 2010.

**Karl Brooks,**

*Regional Administrator, Region 7.*

[FR Doc. 2010-30971 Filed 12-8-10; 8:45 am]

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## FARM CREDIT ADMINISTRATION

### Market Access Agreement

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of approval of the draft amendment to the amended and restated market access agreement.

**SUMMARY:** The Farm Credit Administration (FCA or we) announces its approval of the draft amendment to the Amended and Restated Market Access Agreement (MAA) proposed to be entered into by all of the banks of the Farm Credit System (System) and the Federal Farm Credit Banks Funding Corporation (Funding Corporation). The MAA sets forth the rights and responsibilities of each of the parties when the condition of a bank falls below pre-established financial performance thresholds. The draft amendment (MAA Amendment) is intended to conform the MAA to the Joint and Several Liability Reallocation Agreement (Reallocation Agreement).

**FOR FURTHER INFORMATION CONTACT:** Chris Wilson, Financial Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4204, TTY (703) 883-4434, or Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

**SUPPLEMENTARY INFORMATION:** On August 18, 2010, the FCA published for comment a proposed Reallocation Agreement to be entered into by all of the banks of the System and the Funding Corporation (75 FR 51061). The Reallocation Agreement is designed to establish a procedure for non-defaulting banks to pay maturing System-wide debt on behalf of defaulting banks prior to a statutory joint and several call by the FCA. We received no comments on the proposal and approved it without modifications. The FCA's approval was published in the **Federal Register** on October 20, 2010 (75 FR 64727).

In the supplementary information we provided when we published the proposal for public comment, the FCA stated that the System banks and the Funding Corporation intended also to make conforming changes to the MAA to ensure that the MAA provisions did not impede operation of the Reallocation Agreement. The FCA stated further that, should the Agency approve the Reallocation Agreement, it expected also to approve the conforming MAA Amendment and would publish it in the **Federal Register**.

The FCA published the current MAA in its entirety in the **Federal Register** on January 15, 2003 (68 FR 2037). The current MAA establishes certain financial thresholds at which conditions are placed on the activities of a bank or a bank's access to participation in System-wide and consolidated obligations is restricted. The MAA establishes three categories, which are based on each bank's net collateral ratio, permanent capital ratio, and scores under the Contractual Inter-bank Performance Agreement, which is an agreement among the System banks and the Funding Corporation that establishes certain financial performance criteria.

Under the MAA, as a bank's financial condition declines, the bank moves into Category I, then Category II, and finally Category III. When a bank reaches Category I, it is required to provide certain additional information, including information as to how it will improve its financial condition, to the Monitoring and Advisory Committee, a committee of bank and Funding Corporation representatives established under the MAA. When a bank reaches Category II, in addition to being required to provide additional information, the bank is limited to joining in the issuance of System-wide and consolidated obligations only in those amounts necessary for the bank to be able to roll over its maturing debt. When the bank reaches Category III, the bank is precluded from joining in the issuance of System-wide and consolidated obligations.

The MAA includes provisions that enable a bank in Category II or III to request the opportunity to continue its access to the market. The MAA also provides that the FCA may override a decision to impose Category III prohibitions on access to the market for a period of 60 days, which may be renewed for an additional 60-day period.

The MAA Amendment adds new sections 4.05, 5.05, and 7.23 to the MAA. The MAA Amendment provides that, in a circumstance where the joint