



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) Multi-colored Full Wave Rectified strands of 5mm, conical shaped LED mini bulbs in molded sockets with 4" spacing between bulbs, UL listed with a minimum 50,000 hour lamp life; (2) Ancillary items needed for a T-12 to T-8 retrofit, including the ballast disconnects, ancillary wiring and welding materials where needed, and the spacing clip to accommodate T-8 bulbs into a T-12 fixture; and (3) Roof integrated flat plate collectors producing 1250 btu/ square foot, where the installation requires a roof integrated solar collector to meet local historic preservation or local building standards.

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 Redelelegation Order No. 00-002.01E, dated April 25, 2011. Pursuant to this delegation the Acting Assistant Secretary, EERE, has concluded that: (1) Multi-colored Full Wave Rectified strands of 5mm, conical shaped LED mini bulbs in molded sockets with 4" spacing between bulbs, UL listed with a minimum 50,000 hour lamp life; (2) Ancillary items needed for a T-12 to T-8 retrofit, including the ballast disconnects, ancillary wiring and welding materials where needed, and the spacing clip to accommodate T-8 bulbs into a T-12 fixture; and (3) Roof integrated flat plate collectors producing 1250 btu/ square foot, where the installation requires a roof integrated solar collector to meet local historic preservation or local building standards, 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) Multi-colored Full Wave Rectified strands of 5mm, conical shaped LED mini bulbs in molded sockets with 4" spacing between bulbs, UL listed with a minimum 50,000 hour lamp life.

Through market research and a referral to MEP no American made product was located. No decorative LED bulbs of any kind are made in the United States. In projects where decorative lights are used for extended periods of time, the energy savings is significant.

2) Ancillary items needed for a T-12 to T-8 retrofit, including the ballast disconnects, ancillary wiring and welding materials where needed, and the spacing clip to accommodate T-8 bulbs into a T-12 fixture.

Extensive market research revealed these items are not manufactured domestically. The remaining items utilized in the retrofit, including bulbs, or in cases where the entire fixture is being replaced, the fixture as a whole, must be compliant with Buy American.

3) Roof integrated flat plate collectors producing 1250 btu/ square foot, where the installation requires a roof integrated solar collector to meet local historic preservation or local building standards.

This is reserved for cases in which a roof integrated collector is required, neither NREL nor MEP located domestic producers of flat plate collectors that could meet this need. The remaining parts of each system must be compliant with Buy American.

In light of the foregoing, and under the authority of section 1605(b)(2) of Public Law 111-5 and Redesign 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) Multi-colored Full Wave Rectified strands of 5mm, conical shaped LED mini bulbs in molded sockets with 4" spacing between bulbs, UL listed with a minimum 50,000 hour lamp life; (2) Ancillary items needed for a T-12 to T-8 retrofit, including the ballast disconnects, ancillary wiring and welding materials where needed, and the spacing clip to accommodate T-8 bulbs into a T-12 fixture; and (3) Roof integrated flat plate collectors producing 1250 btu/ square foot, where the installation requires a roof integrated solar collector to meet local historic preservation or local building standards.

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:

9/12/11

