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Nathaniel J. Davis, Sr.,

Deputy Secretary.

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Nationwide Categorical Waivers Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of Limited Waivers.

SUMMARY: The U.S. Department of Energy (DOE) is hereby issuing an Amended 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 LED traffic lights, arrows and crosswalk signals, as well as the adjacent wires and electronic parts necessary for the functionality of the lights themselves.

This amendment withdraws the waiver issued on February 11, 2010 for LED traffic lights, arrows and crosswalk signals, as well as the adjacent wires and electronic parts necessary for the functionality of the lights themselves.

DATES: *Effective Date:* November 5, 2010.

FOR FURTHER INFORMATION CONTACT: Benjamin Goldstein, Energy Technology Program Specialist, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287-1553, Department of Energy, 1000 Independence Avenue, SW., Mailstop EE-2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Under the authority of Recovery Act, Public Law 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"). On September 17, 2010, the authority of the Secretary of Energy to make all inapplicability determinations was delegated to the

Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act.

The Assistant Secretary reserves the right to revisit and amend these determinations, based upon a number of factors, including a change in the manufacturing landscape, such as the entry into the market of new domestic manufacturers.

It has come to the attention of EERE that at least one manufacturer of LED traffic signals (including stop-lights, crosswalk lights and arrows) has recently relocated some of its manufacturing from Mexico back to the United States. These products are now manufactured in the United States of satisfactory quality and in reasonably available quantities to satisfy the project needs of EERE Recovery Act grant recipients.

As a result, the Assistant Secretary has amended the February 11, 2010 nonavailability waiver to withdraw LED traffic lights, arrows and cross walk signals and the adjacent wires and electronic parts necessary for the functionality of the lights themselves. These products are once again subject to the Buy American provisions. The waiver for LED traffic lights, arrows and cross walk signals (as well as the adjacent wires and electronic parts necessary for the functionality of the lights themselves), will be withdrawn effective December 1, 2010.

The remaining items covered by the February 11, 2010 Waiver (Plug-in CFLs of 10 inches or less and electronic ballasts for fluorescent lamps) continue to be covered by the February 11, 2010 waiver.

In order for the February 11, 2010 waiver to continue to apply to LED traffic lights, arrows and crosswalk signals, as well as the adjacent wires and electronic parts necessary for the functionality of the lights themselves substantial steps to commit funds for the purchase of the LED traffic lights, arrows and cross walk signals or the adjacent wires and electronic parts necessary for the functionality of the lights themselves must have been made before December 1, 2010.

Substantial steps to commit funds would include, but are not limited to, (1) issuing a Request for Proposals (RFP) on or before December 1, 2010 (applicable only where the grantee accepts a proposal received under that RFP); (2) in the case of a sole source selection: Placing an order for the goods on or before December 1, 2010; (3) commencing a bidding process on or before December 1, 2010; (4) in circumstances where the grantee solicited quotes without an RFP: the

grantee purchases the goods based on a quote dated on or before December 1, 2010 and the order for the goods is placed on or before December 1, 2010; or (5) grantee has executed a contract or purchase agreement with a supplier to acquire affected goods on or before December 1, 2010.

Having established a proper justification for the withdrawal of a "nonavailability waiver" based on domestic nonavailability, EERE hereby provides notice that on November 5, 2010 an amended nationwide categorical waiver of Section 1605 of the Recovery Act was issued as detailed *supra*. This amended nationwide categorical waiver withdraws the waiver issued on February 11, 2010 for LED traffic lights, arrows and crosswalk signals, as well as the adjacent wires and electronic parts necessary for the functionality of the lights themselves. This notice constitutes the detailed written justification required by Section 1605(c).

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 her responsibility. Consequently, this waiver applies to EERE projects carried out under the Recovery Act.

Authority: Pub. L. 111-5, section 1605.

Issued in Washington, DC on November 5, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Nationwide Categorical Waivers Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of limited waivers.

SUMMARY: The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(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) with respect to (1) surface mounting time switches with 24-hour program dials and single-pole-double-throw switches; (2) HVAC units with 8.375' W × 9.5' H × 2.72' D—Only when the application requires an HVAC unit with a height of 10' or less due to documented space constraints; (3) low temperature thermostats with a temperature range of 15–55 degrees Fahrenheit and manual reset; (4) Programmable DDC controllers for LON protocol, where an existing LON system exists that will not interface with other protocols without the input of extensive time and expense equal to or greater than the cost of the controllers themselves; and (5) Hardware necessary for implementation of Honeywell Enterprise Buildings Integrator (EBI) software for integration of water management and HVAC systems including: Customized Dell PowerEdge T610 Computer Server; Honeywell XL50UMMIPC-CBLON; Echelon LPR–10 #42100R; Sloan—MCR231–D; Sloan—MCR140A, that will be used on eligible EERE-Recovery Act funded projects.

DATES: *Effective Date:* November 5, 2010.

FOR FURTHER INFORMATION CONTACT: Benjamin Goldstein, Energy Technology Program Specialist, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, Department of Energy, 1000 Independence Avenue, SW., Mailstop EE–2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: Under the authority of the Recovery Act, Public Law 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”). On September 17, 2010, the authority of the Secretary of Energy to make all inapplicability determinations was delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act. Pursuant to this delegation the Assistant Secretary, EERE, has concluded that (1) surface mounting time switches with 24-hour program dials and single-pole-double-throw switches; (2) HVAC units with 8.375' W × 9.5' H × 2.72' D—Only when the application requires an HVAC unit with a height of 10' or less due to documented space constraints; and (3)

low temperature thermostats with a temperature range of 15–55 degrees Fahrenheit and manual reset; (4) Programmable DDC controllers for LON protocol, where an existing LON system exists that will not interface with other protocols without the input of extensive time and expense equal to or greater than the cost of the controllers themselves; and (5) Hardware necessary for implementation of Honeywell Enterprise Buildings Integrator (EBI) software for integration of water management and HVAC systems including: Customized Dell PowerEdge T610 Computer Server; Honeywell XL50UMMIPC-CBLON; Echelon LPR–10 #42100R; Sloan—MCR231–D; Sloan—MCR140A, that will be 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 determination.

The NIST 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 five products in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the NIST MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The NIST 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 labor unions, trade associations and 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 have been unsuccessful.

Having established a proper justification based on domestic nonavailability, EERE hereby provides notice that on November 10, 2010, five nationwide categorical waivers of section 1605 of the Recovery Act were issued as detailed *supra*. This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

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 her responsibility. Consequently, this waiver applies to EERE projects carried out under the Recovery Act.

Authority: Pub. L. 111–5, section 1605.

Issued in Washington, DC on November 5, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.

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ENVIRONMENTAL PROTECTION AGENCY

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