



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 five kilowatt (5kW) and fifty kilowatt (50kW) wind turbines.

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"). On April 25, 2011, 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. Pursuant to this delegation the Acting Assistant Secretary, EERE, has concluded that five kilowatt (5kW) and fifty kilowatt (50kW) wind turbines qualify for the "nonavailability" waiver determination when utilized in eligible EERE Recovery Act-funded projects where the wind resource and needs of the project require such sizes.

While there are US manufacturers of turbines appropriate for the needs of the great majority of EERE funded wind projects, there are currently no US manufacturers of five kilowatt (5kW) or fifty kilowatt (50kW) turbines.

The EERE Buy American Coordinator has worked with many manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. This included the Small Wind Manufacturing Council, the Distributed Wind Energy Association, and the American Wind Energy Association. EERE also conducted significant amounts of independent research, including utilizing the

small wind experts employed by the Department of Energy's National Renewable Energy Laboratory. In addition, this nonavailability determination is informed by the many 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 five kilowatt (5kW) and fifty kilowatt (50kW) turbines have been unsuccessful.

For all Recovery Act Buy American waiver requests, EERE also employs a comprehensive process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver. 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.

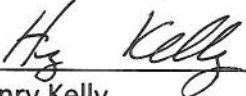
Upon receipt of completed waiver requests for the products in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The MEP reported that their scouting process did not locate any domestic manufacturers for these exact or equivalent items.

The research efforts of MEP confirmed EERE's findings that the 5kW and 50kW turbines referenced in this waiver are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

In light of the foregoing, and under the authority of section 1605(b)(2) of Public Law 111-5 and Redesign Order 00-002-01D, 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: five kilowatt (5kW) and fifty kilowatt(50kW) wind turbines, when used on eligible EERE Recovery Act-funded projects.

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Acting 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.



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

Date: July 8, 2011