

## **Guidance to Accompany Non-Availability Waiver of the Recovery Act Buy American Provisions for 5kW and 50kW Wind Turbines**

### **Explanation**

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 September 17, 2010, 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, concluded July 8, 2011 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 specific needs of the project require such sizes.

While there are currently no U.S. manufacturers of five kilowatt (5kW) or fifty kilowatt (50kW) turbines, there are domestic manufacturers of small scale turbines appropriate for the needs of the majority of EERE-funded wind projects. This guidance document outlines the steps that EERE grant recipients should follow to justify the use of a foreign-made 5kW or 50kW turbine over a similarly-sized domestic alternative, if they wish to utilize the July 8, 2011 nonavailability waiver. .

### **Background**

The EERE Buy American Coordinator has worked with manufacturing stakeholders to scout for domestic manufacturing capacity for both wind turbine sizes contained in the July 8, 2011 nonavailability 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 supplier scouting process was unable to locate any domestic manufacturers of 5kW or 50kW turbines.

## **Guidance to Accompany July 8, 2011 Nonavailability Waiver**

DOE has done much to support the growth of the small wind industry in the United States, and the U.S. has become a global leader in small wind technology research, design, and manufacturing. However, there still exist situations in which no U.S.-manufactured turbine will meet the specific needs of a project and its available wind resource. It is in these situations, where an EERE Recovery Act grantee has engaged in and documented a thorough search of the market, and has found no U.S.-made turbine that will fit its specific project needs, that the application of the July 8, 2011 nonavailability waiver is appropriate.

If the project specifications and available wind resource allow, EERE Recovery Act grantees should explore using a combination of smaller or one larger U.S.-made turbine before applying the DATE SIGNED nonavailability waiver to purchase a foreign made turbine. For example, a project that needs 50kW of power might use two 25kW U.S.-manufactured turbines to produce that power. Likewise, a project needing 5kW might use a 10kW U.S. manufactured machine. Not every project can be modified accordingly, but every project should be examining these possibilities before moving forward with a foreign made product. EERE Project Officers and the EERE Buy American team are all available to assist our Recovery Act grantees in their search for domestically-manufactured small wind turbines.

As always, the Assistant Secretary for Energy Efficiency and Renewable Energy reserves the right to revisit and amend the July 8, 2011 nonavailability Waiver based on any new information or new developments.