



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) two-stage, steam heated absorption chillers rated at 500-1500 tons; (2) single wall evacuated tube collectors for solar thermal systems (when used in a educational context for the purposes of comparing relative efficiency of solar thermal technologies); (3) 2-ton adsorption chillers (for educational purposes, or where alternative technologies are not serviceable); (4) LED Lamps and controllers for studio lights in a television broadcast studio; (5) Global Positioning System (GPS) Time Source Modules; and (6) elongated wall-hung rear spud toilets.

Under the authority of 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 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) two-stage, steam heated absorption chillers rated at 500- 1500 tons; (2) single wall evacuated tube collectors for solar thermal systems (when used in a educational context for the purposes of comparing relative efficiency of solar thermal technologies); (3) 2-ton adsorption chillers (for educational purposes, or where alternative technologies are not serviceable); (4) LED Lamps and controllers for studio lights in a television broadcast studio; (5) Global Positioning System (GPS) Time Source Modules; and (6) elongated wall-hung rear spud toilets.

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 six 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 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.

Specific technical information for the manufactured goods included in this non-availability determination is detailed below:

- (1) two-stage, steam heated absorption chillers rated at 500- 1500 tons;
- (2) single wall evacuated tube collectors for solar thermal systems;
Only when used in a educational context for the purposes of comparing relative efficiency of solar thermal technologies
- (3) 2-ton adsorption chillers;
This is an extremely small unit, for educational purposes, or where alternative technologies are not serviceable.

(4) LED Lamp and controller for studio lights in a television broadcast studio where the following specifications are required:

A CRI (Color Rendition Index) sufficient to render accurate flesh tones and natural colors.

A precise color tuning control to dial in exact color temperature for accurate colors under multiple lighting setups.

(5) Global Positioning System (GPS) Time Source Modules

For direct communication link between a city or county's Traffic Management System (TMS) and the Caltrans Traffic Signal Management and Surveillance System (CTNET).

(6) Elongated wall-hung rear spud toilets.

Includes bowl and hardware.

In light of the foregoing, and under the authority of section 1605(b)(2) of Public Law 111-5 and Redelegation 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 (1) two-stage, steam heated absorption chillers rated at 500- 1500 tons; (2) single wall evacuated tube collectors for solar thermal systems (when used in an educational context for the purposes of comparing relative efficiency of solar thermal technologies); (3) 2-ton adsorption chillers (for educational purposes); (4) LED Lamps and controllers for studio lights in a television broadcast studio; (5) Global Positioning System (GPS) Time Source Modules; and (6) elongated wall-hung rear spud toilets; meeting the specifications detailed above in (1) through (6).

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 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 six product types.