

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) 5-25 Watt LED Candelabra Bulbs (includes Flame tip, bent tip, A19, S11, G16.5 or G25 clear bulb enclosure); (2) 140 Watt LED fixtures with 10 degree beams capable of illuminating from 100 feet, UL certified; and (3) 27 Watt round LED fixtures, producing 1 foot-candle at 242 feet distance, UL certified. This waiver expires May 1, 2012.

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 Redefinition Order No. 00-002.01E, dated April 25, 2011. Pursuant to this delegation the Acting Assistant Secretary, EERE, has concluded that: (1) 5-25 Watt LED Candelabra Bulbs (includes Flame tip, bent tip, A19, S11, G16.5 or G25 clear bulb enclosure); (2) 140 Watt LED fixtures with 10 degree beams capable of illuminating from 100 feet, UL certified; and (3) 27 Watt round LED fixtures, producing 1 foot-candle at 242 feet distance, UL certified, 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 at this time, for a limited period of time, until May 1, 2012.

In order to utilize this waiver, grantees must have taken substantial steps towards procurement of these items by May 1, 2012.

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 three 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) 5-25 Watt LED Candelabra Bulbs (includes Flame tip, bent tip, A19, S11, G16.5 or G25 clear bulb enclosure

LED Candelabra or medium base, outdoor use, dimmable, mercury free, 2700 and/or 3000 Kelvin Correlated Color Temperature (CCT), 80+ Color Rendering Index (CRI), 5-25watt Flame tip, bent tip, A19, S11, G16.5 or G25 clear bulb enclosure. Domestic manufacturers are working to enter the market in the near future, however, production cannot yet meet the needs of current projects. EERE is committed to assisting grantees to complete projects while supporting domestic manufacturing- thus this waiver will expire May 1, 2012.

2&3) 140 Watt LED fixtures with 10 degree beams capable of illuminating from 100feet, UL certified; and 27 Watt round LED fixtures, producing 1 foot-candle at 242 feet distance, UL certified

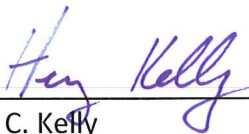
The new LED fixtures represent a relatively new, emerging technology that can provide comparable light output at substantially lower energy levels. As a new technology, the number of manufacturers, though growing, is somewhat limited. Domestic manufacturers are working to enter the market in the near future, however, production cannot yet meet the needs of current projects. EERE is committed to assisting grantees to complete projects while supporting domestic manufacturing- thus this waiver will expire May 1, 2012.

In light of the foregoing, and under the authority of section 1605(b)(2) of Public Law 111-5 and Redesignation 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) 5-25 Watt LED Candelabra Bulbs (includes Flame tip, bent tip, A19, S11, G16.5 or G25 clear bulb enclosure); (2) 140 Watt LED fixtures with 10 degree beams capable of illuminating from 100 feet, UL certified; and (3) 27 Watt round LED fixtures, producing 1 foot-candle at 242 feet distance, UL certified. This waiver expires May 1, 2012.

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.

Recipients of EERE Recovery Act funds who have taken substantial steps to commit funds for the purchase of the items covered in this waiver by May 1, 2012 will not be impacted by the expiration of this waiver.

Furthermore, I reserve the right to revisit and amend this determination based on new developments or changes in the domestic manufacturing capacity for these three product types.



Date: 1/10/2012

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