



**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 non-residential programmable thermostats; commercial scale fully-automatic wood pellet boiler systems; facility and small district wood pellet and chip boiler furnaces; variable refrigerant flow zoning and inverter-driven ductless mini-split HVAC systems; electrical “smart” strips/surge protectors; gas or propane tankless water heaters up to 200,000 BTUs; and fully-enclosed continuous composting systems.**

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 provisions) 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 November 10, 2009, the Secretary of Energy delegated the authority to make all inapplicability determinations 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 non-residential programmable thermostats; commercial scale fully-automatic wood pellet boiler systems; facility and small district wood pellet and chip boiler furnaces; variable refrigerant flow zoning and inverter-driven ductless mini-split HVAC systems; electrical “smart” strips/surge protectors; gas or propane tankless water heaters up to 200,000 BTUs; and fully-enclosed continuous composting systems all qualify for the “nonavailability” waiver determination.

EERE has developed a 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 National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), to disseminate the technical specifications for the manufactured goods being submitted to EERE for waiver consideration, in order to scour the manufacturing landscape in search of producers before making any nonavailability. Many of the items contained in this nonavailability waiver were submitted to EERE as a result of a Request for Information published in *Federal Register* Vol. 75, No. 23. Upon receipt of completed waiver requests in response to the RFI or independently, EERE reviewed the information provided and submitted the relevant

technical information to the National Institute of Standards and Technology Manufacturing Extension Partnership (NIST MEP). MEP has a network of 59 centers across the country that work directly with domestic manufacturers and possess extensive knowledge of their specific capabilities. The EERE—MEP collaboration draws on this extensive network centers to “scout” for domestic manufacturers for the items submitted for Buy American waiver consideration by EERE Recovery Act grantees. The MEP centers reported that their scouting process did not locate any domestic manufacturers for these 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 the MEP’s scouting efforts. EERE’s efforts revealed 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 communications 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. For example, EERE has received four separate individual waiver requests for the types of HVAC systems included in this nonavailability waiver.

Specific technical information for the manufactured goods included in this nonavailability determination is detailed below:

(1) Programmable Thermostats – Includes devices that permit adjustment of heating or air-conditioning operations according to a pre-set schedule. Applies only to non-residential programmable thermostat units.

(2) Commercial Scale Fully-Automatic Wood Pellet Boiler System – Includes wood pellet boilers featuring a pneumatic conveyance system to transport wood pellets to the boiler, an automatic ignition system, continuously monitored and optimized combustion, ash removal/management system and the ability to control and integrate with other existing heat systems.

(3) Facility and Small District Wood Pellet and Chip Boiler Furnaces – Includes high efficiency, ultra-low emission biomass boilers for facility and small district heating, ranging from 35,000 Btu – 15,000,000 Btu.

(4) Variable Refrigerant Flow Zoning HVAC Systems and Inverter-Driven Ductless Mini-Split HVAC Systems - Includes variable refrigerant flow (VRF) multi-split heat pump (with or without heat recovery) and air conditioning systems; and inverter-driven ductless

mini-split heat pump and air conditioner systems. This waiver includes the main condenser and heat pump units, wall and fan coil units, zone controllers, remote controls, and any other component of the larger HVAC system.

(5) Electrical “Smart” Strips/Surge Protectors – Includes power strips that detect activity in the attached equipment and cut power during periods of inactivity.

(6) Gas or Propane Tankless Water Heaters up to 200,000 BTUs – Does not apply to electric tankless water heaters, which are widely manufactured in the United States.

(7) Fully-Enclosed Continuous Composting Systems – Includes multi-zone, continuous loading, odor and moisture controlled composter with leachate recirculation and in-situ mixing capabilities.

In light of the foregoing, and under the authority of section 1605(b)(2) of Public Law 111–5 and Redesignation Order 00-002-01C, dated November 10, 2009, with respect to Recovery Act projects funded by EERE, I hereby issue a “determination of inapplicability” (a waiver under the Recovery Act Buy American provisions) for non-residential programmable thermostats; commercial scale fully-automatic wood pellet boiler systems; facility and small district wood pellet and chip boiler furnaces; variable refrigerant flow zoning and inverter-driven ductless mini-split HVAC systems; electrical “smart” strips/surge protectors; gas or propane tankless water heaters up to 200,000 BTUs; and fully-enclosed continuous composting systems.

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.

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



Cathy Zoi  
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U.S. Department of Energy

May 24, 2010