



Department of Energy
Washington, DC 20585

ASSISTANT SECRETARY OF ENERGY
FOR ENERGY EFFICIENCY AND RENEWABLE ENERGY

MEMORANDUM OF DECISION

SUBJECT: Determination of inapplicability (nationwide limited waiver in the public interest) of section 1605 of the Recovery Act of 2009 (the Buy American provision) to EERE-funded projects for incidental items that comprise in total a *de minimis* amount of the total cost of the iron, steel, and manufactured goods used in a project; that is, any such incidental items up to a limit of no more than 5 percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project.

Under the authority of the Recovery Act, section 1605(b)(1), the head of a Federal department or agency may issue a “determination of inapplicability” (a waiver of the Buy American provisions) if the application of the restrictions of section 1605 would be inconsistent with the public interest. 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, for EERE Recovery Act projects.

Pursuant to this delegation, the Assistant Secretary, EERE, has determined that application of section 1605 restrictions would be inconsistent with the public interest for incidental items that comprise in total a *de minimis* amount of the total cost of the iron, steel and manufactured goods used in the project; that is, any such incidental items up to a limit of no more than 5 percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project.

Recovery Act projects funded by EERE typically involve the use of literally thousands of miscellaneous, generally low-cost items that are essential for, but incidental to, the construction, alteration, maintenance or repair of a public building or public work and are incorporated into the physical structure of the project, such as nuts, bolts, wires, cables, and switches. For many of these incidental items, the country of manufacture and the availability of alternatives are not always readily or reasonably identifiable in the normal course of business. More importantly, the miscellaneous character of these items, together with their low cost (both individually and when procured in bulk), characterize them as incidental to the project.

Requiring individual waivers for incidental items would be time prohibitive and overly burdensome for both applicants and for EERE. Therefore, a nationwide limited *de minimis* waiver of incidental items up to a limit of no more than 5 percent of the total

cost of the iron, steel, and manufactured goods used in and incorporated into a project is justified in the public interest.

Issuance of this nationwide limited waiver recognizes EERE's commitment to expeditious costing of Recovery Act dollars, by balancing the need for expeditious and efficient implementation of the Recovery Act while still applying the Buy American provisions for materials that are greater than a *de minimis* part of the projects.

In light of the foregoing, and under the authority of section 1605(b)(1) of the Public Law 111-5 and Redelegation 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 incidental items that comprise in total a *de minimis* amount of the project; that is, any such incidental items up to a limit of no more than 5 percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project.



Cathy Zoi
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U.S. Department of Energy

May 24, 2010