

comment will follow the 10-minute rule.

*Minutes:* The minutes of this meeting will be available for viewing on the U.S. Department of Energy's Office of Advanced Scientific Computing Web site at: <http://www.er.doe.gov/ascr/ASCAC/ASCAC.html>.

Issued at Washington, DC on February 15, 2011.

**LaTanya Butler,**

*Acting Deputy Committee Management Officer.*

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### Nationwide Limited Public Interest Waiver Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

**ACTION:** Notice of extension of limited waiver.

**SUMMARY:** The U.S. Department of Energy (DOE) is hereby granting a six-month extension of the amended nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of section 1605(b)(1) (amended public interest waiver), with respect to the following solar photo-voltaic (PV) equipment: (1) Domestically-manufactured modules containing foreign-manufactured cells, (2) Foreign-manufactured modules, when completely comprised of domestically-manufactured cells, and (3) Any ancillary items and equipment (including, but not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, cables and all otherwise incidental equipment with the exception of inverters and batteries) when utilized in a solar installation involving a U.S. manufactured PV module, or a module manufactured abroad but comprised exclusively of domestically-manufactured cells until August 6, 2011. This waiver expires August 6, 2011 (six months from the date of expiration of the original waiver). 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

August 6, 2011 will not be impacted by the expiration of this waiver.

**DATES:** Effective Date February 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Goldstein, Recovery Act Buy American Coordinator, Weatherization and Intergovernmental Program, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287-1553, [buyamerican@ee.doe.gov](mailto:buyamerican@ee.doe.gov), Department of Energy, 1000 Independence Avenue, SW., Mailstop EE-2K, Washington, DC 20585.

#### SUPPLEMENTARY INFORMATION:

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 section 1605 would be inconsistent with the public interest. On September 17, 2010, the Secretary of Energy re-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 has determined that application of section 1605 restrictions would be inconsistent with the public interest for incidental and/or ancillary solar Photovoltaic (PV) equipment, when this equipment is utilized in solar installations containing domestically manufactured PV cells or modules (panels).

This extension of the amended public interest determination extends the amended waiver of the Buy American requirements in EERE-funded Recovery Act projects for the purchase of the following solar PV equipment: (1) Domestically-manufactured modules containing foreign-manufactured cells, (2) Foreign-manufactured modules, when completely comprised of domestically-manufactured cells, and (3) Any ancillary items and equipment (including, but not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, cables and all otherwise incidental equipment with the exception of inverters and batteries) when utilized in a solar installation involving a U.S. manufactured PV module, or a module manufactured abroad but comprised exclusively of domestically-manufactured cells.

This waiver expires August 6, 2011 (six months from the date of expiration of the original waiver). 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 August 6, 2011 will not

be impacted by the expiration of this waiver.

*Definitions*—Solar cells are the basic building block of PV technologies. The cells are functional semiconductors, made by processing and treating crystalline silicon or other photo-sensitive materials to create a layered product that generates electricity by absorbing light photons. The individual cells are cut and/or assembled into larger groups known as *panels* or *modules*. These two terms are synonymous and used interchangeably in this memorandum. The panel is the end product, and consists of a series of solar cells, a backing surface, and a covering to protect the cells from weather and other types of damage. A solar *array* is created by installing multiple modules in the same location to increase the electrical generating capacity. Operational solar PV modules and arrays use cells to capture and transfer solar-generated electricity.

The Buy American provisions contain no requirement with regard to the origin of components or subcomponents in manufactured goods used in a project, as long as the manufacturing occurs in the United States [2 CFR 176.70(a)(2)(ii)]. However, determining where final manufacturing occurs in the context of the solar production chain is complicated. Under a plain reading of the Recovery Act Buy American provisions, only the PV modules would need to be manufactured in the United States, but the source of the component parts—including the high-value cells—would not be relevant to complying with the Buy American requirements.

EERE and the National Renewable Energy Laboratory have conducted extensive research into the nature of the domestic solar manufacturing industry to determine the best way to apply the Buy American requirements to solar PV projects. EERE considered three basic options: (1) To follow a plain reading of the Buy American provisions and require that only the modules be produced in the United States, irrespective of the origin of the cells contained in the modules; (2) determine that the modules and cells are distinct manufactured goods and thus both must be produced in the United States; and (3) choose a more inclusive approach that allows a solar installation to comply if either the cells or the modules are manufactured in the United States.

Of the options considered, only option (3) recognized EERE's determination that the manufacture of PV cells and modules represent distinct instances of "substantial transformation" along the solar PV manufacturing chain, and that the public interest is best

served by allowing either instance of substantial transformation to qualify the final solar installation or array as compliant with the Buy American provisions.

Conducting either of these discrete activities (production of the cells or the modules) in the United States creates roughly equal numbers of American jobs, and aligns squarely with purpose and the principles the Recovery Act Buy American provision by focusing on the highest-value and most labor-intensive processes along the solar PV manufacturing chain.

The extension of the Solar Public Interest Waiver also demonstrates EERE's commitment to the continued swift expenditure of Recovery Act funds, by permitting grantees to utilize a diverse range of existing American-manufactured solar technologies. This is a one-time extension encouraging grantees to complete their projects in an expedient manner; strengthening local clean energy infrastructure while leveraging Recovery Act dollars to support U.S. jobs along the solar manufacturing supply chain and in high-skill solar installation activities.

For all the reasons outlined above, the Assistant Secretary of EERE has determined it is in the public interest to issue a one-time extension of the Solar Public Interest Waiver of the Recovery Act Buy American provisions, permitting EERE Recovery Act grantees to utilize solar PV installations where either the cell or the module is manufactured in the United States.

In addition, this extended public interest determination waives the Buy American requirements for all ancillary items that are incidental in cost and technological significance, thus eliminating ambiguities concerning whether the incidental items are final manufactured goods or merely components of a larger solar module, installation or array. These items include, but are not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, and cables. Inverters and batteries remain subject to the Buy American provisions. This helps support the solar installation industry, because it removes the burden from businesses—especially small businesses—of verifying the origin of each of the many minor components of a solar installation or array. This also benefits grantees, businesses, American taxpayers and the Department of Energy by encouraging more competitive bids on solar projects.

Issuance of this nationwide public interest waiver recognizes EERE's

commitment to expeditious costing of Recovery Act dollars by enabling recipients to easily ascertain whether a given solar installation complies with the Buy American provision. Simultaneously, this waiver advances the purpose and the principles of the Buy American provision by focusing on the highest-value and most labor-intensive pieces of solar PV equipment.

In light of the foregoing, and under the authority of section 1605(b)(1) of Public Law 111-5 and the Redesignation Order, dated September 17, 2010, with respect to Recovery Act projects funded by EERE, the Assistant Secretary on February 4, 2011 issued an extension of the amended "determination of inapplicability" (a waiver under the Recovery Act Buy American provisions) for the following items: (1) Domestically-manufactured modules containing foreign-manufactured cells, (2) Foreign-manufactured modules, when completely comprised of domestically-manufactured cells, and (3) Any ancillary items and equipment (including, but not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, cables and all otherwise incidental equipment with the exception of inverters and batteries) when utilized in a solar installation involving a U.S. manufactured PV module, or a module manufactured abroad but comprised exclusively of domestically-manufactured cells until August 6, 2011.

This waiver expires August 6, 2011 (six months from the date of expiration of the original waiver). 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 August 6, 2011 will not be impacted by the expiration of this waiver.

Furthermore, the Assistant Secretary reserves the right to revisit and amend this determination based on new information or new developments.

**Authority:** Pub. L. 111-5, section 1605.

Issued in Washington, DC, on February 4, 2011.

**Cathy Zoi,**

*Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.*

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### Nationwide Categorical Waivers Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

**ACTION:** Notice of limited waivers.

**SUMMARY:** The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(2) (iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality) with respect to (1) two-stage, steam heated absorption chillers rated at 500–1,500 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, or where alternative technologies are not serviceable); (4) LED Lamp and controller for studio lights in a television broadcast studio (where a CRI (Color Rendition Index) sufficient to render accurate flesh tones and natural colors and a precise color tuning control to dial in exact color temperature for accurate colors under multiple lighting setups are required); (5) Global Positioning System (GPS) Time Source Modules (to serve as direct communication link between a county or city's Traffic Management System (TMS) and the Caltrans Traffic Signal Management and Surveillance System (CTNET)); and (6) elongated wall-hung rear spud toilets (bowl and hardware) that will be used on eligible EERE Recovery Act-funded projects.

**DATES:** *Effective Date:* January 12, 2011.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Goldstein, Energy Technology Program Specialist, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287-1553, Department of Energy, 1000 Independence Avenue SW., Mailstop EE-2K, Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:** Under the authority of the Recovery Act, Public Law 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