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Nathaniel J. Davis, Sr.,

Deputy Secretary.

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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.

**ACTION:** Notice of Limited Waivers.

**SUMMARY:** The U.S. Department of Energy (DOE) is hereby issuing an Amended 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 LED traffic lights, arrows and crosswalk signals, as well as the adjacent wires and electronic parts necessary for the functionality of the lights themselves.

This amendment withdraws the waiver issued on February 11, 2010 for LED traffic lights, arrows and crosswalk signals, as well as the adjacent wires and electronic parts necessary for the functionality of the lights themselves.

**DATES:** *Effective Date:* November 5, 2010.

**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 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 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.

The Assistant Secretary reserves the right to revisit and amend these determinations, based upon a number of factors, including a change in the manufacturing landscape, such as the entry into the market of new domestic manufacturers.

It has come to the attention of EERE that at least one manufacturer of LED traffic signals (including stop-lights, crosswalk lights and arrows) has recently relocated some of its manufacturing from Mexico back to the United States. These products are now manufactured in the United States of satisfactory quality and in reasonably available quantities to satisfy the project needs of EERE Recovery Act grant recipients.

As a result, the Assistant Secretary has amended the February 11, 2010 nonavailability waiver to withdraw LED traffic lights, arrows and cross walk signals and the adjacent wires and electronic parts necessary for the functionality of the lights themselves. These products are once again subject to the Buy American provisions. The waiver for LED traffic lights, arrows and cross walk signals (as well as the adjacent wires and electronic parts necessary for the functionality of the lights themselves), will be withdrawn effective December 1, 2010.

The remaining items covered by the February 11, 2010 Waiver (Plug-in CFLs of 10 inches or less and electronic ballasts for fluorescent lamps) continue to be covered by the February 11, 2010 waiver.

In order for the February 11, 2010 waiver to continue to apply to LED traffic lights, arrows and crosswalk signals, as well as the adjacent wires and electronic parts necessary for the functionality of the lights themselves substantial steps to commit funds for the purchase of the LED traffic lights, arrows and cross walk signals or the adjacent wires and electronic parts necessary for the functionality of the lights themselves must have been made before December 1, 2010.

Substantial steps to commit funds would include, but are not limited to, (1) issuing a Request for Proposals (RFP) on or before December 1, 2010 (applicable only where the grantee accepts a proposal received under that RFP); (2) in the case of a sole source selection: Placing an order for the goods on or before December 1, 2010; (3) commencing a bidding process on or before December 1, 2010; (4) in circumstances where the grantee solicited quotes without an RFP: the

grantee purchases the goods based on a quote dated on or before December 1, 2010 and the order for the goods is placed on or before December 1, 2010; or (5) grantee has executed a contract or purchase agreement with a supplier to acquire affected goods on or before December 1, 2010.

Having established a proper justification for the withdrawal of a "nonavailability waiver" based on domestic nonavailability, EERE hereby provides notice that on November 5, 2010 an amended nationwide categorical waiver of Section 1605 of the Recovery Act was issued as detailed *supra*. This amended nationwide categorical waiver withdraws the waiver issued on February 11, 2010 for LED traffic lights, arrows and crosswalk signals, as well as the adjacent wires and electronic parts necessary for the functionality of the lights themselves. This notice constitutes the detailed written justification required by Section 1605(c).

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.

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

Issued in Washington, DC on November 5, 2010.

**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