



Foreign Entity Participation and Performance of Foreign Work in the United States Guidance

Applicants that seek to include foreign entity participation or foreign work in a Department of Energy (DOE) Office of Clean Energy Demonstrations (OCED) funded project must submit written Foreign Entity Participation Waiver and Foreign Work Waiver request(s) as part of their application. If selected for award negotiations, the selectee must provide any updates during the negotiation process. The following guidance provides general information about these waiver requirements.

What is considered a Foreign Entity?

A foreign entity is any corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments. For more information, refer to the definitions at [2 CFR § 200.1](#) for "Foreign organization" and "Foreign public entity."

Are Foreign Entities eligible to submit applications for funding?

All award recipients and subrecipients must be organized, chartered, or incorporated (or otherwise formed) under the laws of a state or territory of the United States; have majority domestic ownership and control; and have a physical location for business operations in the United States. For specific eligibility requirements and instructions, refer to the specific OCED Funding Opportunity Announcement (FOA).

Can I seek a Foreign Entity Participation waiver?

In limited circumstances, DOE may approve a waiver to allow a foreign entity to participate as a prime recipient or subrecipient. A foreign entity may generally submit an application to OCED FOAs, but the application must be accompanied by an explicit written waiver request. Likewise, if the applicant seeks to include a foreign entity as a subrecipient, the applicant must submit a separate explicit written waiver request in the application for each proposed foreign subrecipient.

For specific eligibility requirements and instructions, refer to the specific OCED FOA.

This guidance document does not supersede Federal laws and regulations. This OCED guidance document is for informational purposes only and is not a requirements document. If there are inconsistencies between this OCED guidance document and any specific program or project document, the specific OCED program or project document should be relied upon as it is the controlling document.



What are the criteria for a Foreign Entity Participation waiver?

Foreign entities seeking to participate in a project funded by DOE must satisfactorily demonstrate that:

- A. Its participation is in the best interest of the United States industry and United States economic development;
- B. The project team has appropriate measures in place to control sensitive information and protect against unauthorized transfer of scientific and technical information;
- C. Adequate protocols exist between the United States subsidiary and its foreign parent organization to comply with export control laws and any obligations to protect proprietary information from the foreign parent organization;
- D. The work is conducted within the United States and the entity acknowledges and demonstrates that it has the intent and ability to comply with the U.S. Competitiveness Provision¹; and
- E. The foreign entity will satisfy other conditions that may be deemed necessary by DOE to protect United States government interests.

What needs to be included in a Foreign Entity Participation Waiver request?

A Foreign Entity Participation Waiver request must include the following:

- A. Information about the entity: name, point of contact, and proposed type of involvement in the project;
- B. Country of incorporation, the extent of the ownership/control by foreign entities, whether the entity is state owned or controlled, a summary of the ownership breakdown of the foreign entity and the percentage of ownership/control by foreign entities, foreign shareholders, foreign state or foreign individual(s);
- C. The rationale for proposing a foreign entity to participate in the project (must address the criteria above);
- D. A description of the project's anticipated contributions to the U.S. economy;
 - » How the project will benefit the United States, including manufacturing, contributions to employment in the United States and growth in new markets and jobs in the United States;
 - » How the project will promote manufacturing of products and/or services in the United States;
- E. A description of how the foreign entity's participation is essential to the project;
- F. A description of the likelihood of Intellectual Property (IP) being created from the work and the treatment of any such IP; and
- G. Countries where the work will be performed (Note: if any work is proposed to be conducted outside the United States, the applicant must also complete a separate request foreign work waiver).

DOE may also require:

- A. A risk assessment with respect to IP and data protection protocols that includes the export control risk based on the data protection protocols, the technology being developed and the foreign entity and country. These submissions could be prepared by the project lead (if not the prime recipient), but the prime recipient must make a representation to DOE as to whether it believes the data protection protocols are adequate. It must also make a representation of the risk assessment – high, medium, or low risk of data leakage to a foreign entity.
- B. Additional language be added to any agreement or sub-agreement to protect IP, mitigate risk or other related purposes.

DOE may require additional information from the entity before considering the waiver request.

1. A primary objective of DOE's multi-billion-dollar research, development, and demonstration investments is to cultivate new research and development ecosystems, manufacturing capabilities, and supply chains for and by United States industry and labor. Therefore, in exchange for receiving taxpayer dollars to support an applicant's project, the applicant must agree to a U.S. Competitiveness provision requiring that any products embodying any subject invention or produced through the use of any subject invention will be manufactured substantially in the United States unless the Recipient can show to the satisfaction of DOE that it is not commercially feasible. Award terms, including the specific U.S. Competitiveness Provision applicable to the various types of recipients and projects, are available [here](#).



Does all work funded under an OCED Funding Opportunity Announcement have to be performed in the United States?

All work for DOE projects must be performed in the United States, unless a foreign work waiver is approved.

Can I seek a waiver of the Performance of Work in the United States requirement?

To seek a waiver of the performance of work in the United States requirement (Foreign Work Waiver), the applicant or selectee must submit an explicit Foreign Work Waiver request. A separate Foreign Work Waiver request must be submitted for each entity proposing performance of work outside of the United States.

What are the criteria for a Foreign Work Waiver?

Overall, a Foreign Work Waiver request must satisfactorily demonstrate to DOE that it would further the purposes of the project proposed in the FOA and is otherwise in the economic interests of the United States.

What needs to be included in a Foreign Work Waiver request?

A request for a Foreign Work Waiver must include the following:

- A. The rationale for performing the work outside the United States ("foreign work");
- B. A description of the work proposed to be performed outside the United States;
- C. An explanation as to how the foreign work is essential to the project;
- D. A description of the anticipated benefits to be realized by the proposed foreign work and the anticipated contributions to the United States economy;
- E. The associated benefits to be realized and the contribution to the project from the foreign work;
- F. How the foreign work will benefit the United States, including manufacturing, contributions to employment in the United States and growth in new markets and jobs in the United States;
- G. How the foreign work will promote manufacturing of products and/or services in the United States;
- H. A description of the likelihood of Intellectual Property (IP) being created from the foreign work and the treatment of any such IP;
- I. The total estimated cost (DOE and recipient cost share) of the proposed foreign work;
- J. The country(ies) in which the foreign work is proposed to be performed; and
- K. The name of the entity that would perform the foreign work.

DOE may require additional information before considering the waiver request.

Can DOE's decision concerning Foreign Entity Participation Waiver or Foreign Work Waiver requests be appealed?

No. DOE's decision concerning a waiver request is not appealable.