

Frequently Asked Questions

Intellectual Property:

Question: Can the DOE clarify its intent with respect to intellectual property, including patents and patent waivers, and publication of data.

Answer. Since SGIG grants do not involve research and development, there is no patent rights clause included in an SGIG award, and no patent waiver is necessary. Thus, the Government gets no rights in any inventions associated with SGIG grants.

Regarding data generated under a grant, the grant instrument will specify that DOE has the right to: (1) obtain, reproduce, publish or otherwise use the data first produced under an award; and (2) authorize others to receive, reproduce, publish or otherwise use such data for Federal purposes.

This does not mean that all first produced data will be published, or available for publication. Certain data, or types of data, may qualify as "commercially valuable data" within the meaning of 10 CFR 1004.3(e)(4), DOE's Freedom of Information regulation, and therefore may not be available for public dissemination. The grant will specify what is considered commercially valuable data. The grant will address what is to be considered commercially valuable data, either initially at the time of award, or through a process of a mutually agreed amendment to a signed award.

Project Changes Due to Regulatory Approvals:

Question: To what extent can a Public Utility Commission (PUC) or other Regulatory/Oversight Agency change a project before it affects the terms and conditions or leads to termination of the DOE grant award?

Answer: There are no bright lines as to when changes proposed to be made to a project by a PUC or other Regulatory or Oversight Agency would dictate whether a project can go forward, be modified or will be terminated. Pursuant to a standard term of the grant awards (quoted below), it is the responsibility of the recipient of the grant to notify DOE of failure to obtain or rescission of PUC or similar regulatory approvals required for a project to proceed and to halt work on the affected portion of the project. This notice would cause DOE and the recipient to examine the factors identified in the clause that include the Recipient's continued ability to provide their cost share; the ability to meet the project's technical objectives; the ability of the project to complete data and metrics objectives, including agreed to consumer behavior studies; the ability of the project to complete work on schedule. In addition, it is within DOE's discretion, after a review period and assessment of the impact of the failure to obtain or rescission of the regulatory approval, to determine whether to proceed, proceed in a modified form or terminate. While DOE is not limited in its communication with PUCs under this provision, this provision does not contemplate direct DOE-PUC discussion or negotiation of issues.

Buy American – Substantial Transformation

In the case of a manufactured good that consists in whole or in part of materials from another country, if it has been substantially transformed in the U.S. into a new and different manufactured good distinct from the materials from which it was transformed, it can be considered compliant with the Buy American requirements (2 CFR 176.160(a)).

A determination of whether substantial transformation has occurred is always on a case-by-case basis. Recipients and subrecipients are responsible for making their own determinations of whether substantial transformation has occurred. Recipients and subrecipients are encouraged to consult with their own legal counsel to make determinations of substantial transformation of manufactured goods and to document their files with evidence that the substantial transformation standard has been met to defend protests and to prepare for audits. Recipients are cautioned that in unclear (marginal) cases if they have reasonable doubt, and U.S. made goods meeting the recipient's needs are not available, then the recipient should apply for a waiver based on non-availability.

Recipients may find the questions below helpful in determining whether substantial transformation has occurred.

1. Were all of the components of the manufactured goods manufactured in the U.S., and were all of the components assembled into the final production the U.S.? (If the answer is yes, then it is clearly manufactured in the U.S., and the inquiry is complete.)
2. Was there a change in character for use of the good or the components in the U.S.? (These questions are asked about the finished good as a whole, not about each individual component.)
 - a. Was there a change in the physical and/or chemical properties or characteristics designed to alter the functionality of the good?
 - b. Did the manufacturing or processing operation result in a change of a product(s) with one use into a product with a different use?
 - c. Did the manufacturing or processing operation result in the narrowing of the range of possible uses of a multi-use product?

If the answer is yes to any of 2a, 2b, or 2c, then the answer to question #2 is yes.

3. Was/were the process(es) performed in the U.S. (including but not limited to assembly) complex and meaningful?
 - a. Did the process(es) take a substantial amount of time?
 - b. Was/were the process(es) costly?
 - c. Did the process(es) require a number of different operations?
 - d. Did the processes require particular high level skills?
 - e. Was substantial value added in the process(es)?

If the answer is yes to at least two of 3a, 3b, 3c, 3d, or 3e, then the answer to question #3 is yes.

Established interpretations disqualify some actions under any circumstances:

Questions and Answers for the Smart Grid Investment Grant Program

- Cosmetic or surface changes (e.g., painting, lacquering, or cleaning)
- Simply cutting a material to length or width (e.g., cutting steel pipe to particular length)
- If all pieces are shipped by one company with the intent of providing all components necessary to be assembled into a functional good (e.g., pump station)