

## §910.124

## 2 CFR Ch. IX (1–1–24 Edition)

not reinvested into the business as profit or dividends to its employees or shareholders.

[79 FR 76024, Dec. 19, 2014, as amended at 87 FR 15320, Mar. 18, 2022]

### §910.124 Eligibility.

(a) *Purpose and scope.* This section implements section 2306 of the Energy Policy Act of 1992, 42 U.S.C. 13525, and sets forth a general statement of policy, including procedures and interpretations, for the guidance of implementing DOE officials in making mandatory pre-award determinations of eligibility for financial assistance under Titles XX through XXIII of that Act.

(b) *Definitions.* The definitions in Subpart A of 2 CFR part 200, including the definition of the term “Federal financial assistance,” are applicable to this section. In addition, as used in this section:

*Act* means the Energy Policy Act of 1992.

*Company* means any business entity other than an organization of the type described in section 501(c) (3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)).

*Covered program* means a program under Titles XX through XXIII of the Act. (A list of covered programs, updated periodically as appropriate, is maintained and published by the Department of Energy.)

*Parent company* means a company that:

(1) Exercises ultimate ownership of the applicant company either directly, by ownership of a majority of that company’s voting securities, or indirectly, by control over a majority of that company’s voting securities through one or more intermediate subsidiary companies or otherwise, and

(2) Is not itself subject to the ultimate ownership control of another company.

*United States* means the several States, the District of Columbia, and all commonwealths, territories, and possessions of the United States.

*United States-owned company* means:

(1) A company that has majority ownership by individuals who are citizens of the United States, or

(2) A company organized under the laws of a State that either has no par-

ent company or has a parent company organized under the laws of a State.

*Voting security* has the meaning given the term in the Public Utility Holding Company Act (15 U.S.C. 15b(17)).

(c) *What must DOE determine.* A company shall be eligible to receive an award of financial assistance under a covered program only if DOE finds that—

(1) Consistent with §910.124(d), the company’s participation in a covered program would be in the economic interest of the United States; and

(2) The company is either—

(i) A United States-owned company; or

(ii) Incorporated or organized under the laws of any State and has a parent company which is incorporated or organized under the laws of a country which—

(A) Affords to the United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Act;

(B) Affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and

(C) Affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(d) *Determining the economic interest of the United States.* In determining whether participation of an applicant company in a covered program would be in the economic interest of the United States under §910.124(c)(1), DOE may consider any evidence showing that a financial assistance award would be in the economic interest of the United States including, but not limited to—

(1) Investments by the applicant company and its affiliates in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States);

(2) Significant contributions to employment in the United States by the applicant company and its affiliates; and