

## § 600.16

### Notice of Restriction on Disclosure and Use of Data

Pages [ ] of this document may contain trade secrets or commercial or financial information that is privileged or confidential and is exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a financial assistance or loan agreement between the submitter and the Government. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.

(ii)(A) To further protect such data, except as otherwise provided in paragraph (b)(1)(iii) of this section, each page containing trade secrets or commercial or financial information that is privileged or confidential must be specifically identified and marked with text similar to the following:

May contain trade secrets or commercial or financial information that is privileged or confidential and exempt from public disclosure.

(B) In addition, each line or paragraph containing trade secrets or commercial or financial information that is privileged or confidential must be marked with brackets or other clear identification, such as highlighting.

(iii) (A) In the case where a form for data submission is unalterable, such as certain forms submitted through Grants.gov, submitters must include in a cover letter or the project narrative a notice like the following:

*Forms [ ] may contain trade secrets or commercial or financial information that is privileged or confidential and exempt from public disclosure. Such information shall be used or disclosed only for evaluation purposes or in accordance with a financial assistance or loan agreement between the submitter and the Government. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.*

(B) The cover letter or project narrative must also specify the particular information on such forms that the submitter believes contains trade secrets or commercial or financial information that is privileged or confidential.

(2) Unless DOE specifies otherwise, DOE shall not refuse to consider an application or other document solely on the basis that the application or other

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document is restrictively marked in accordance with paragraph (b)(1) of this section.

(3) Data (or abstracts of data) specifically marked in accordance with paragraph (b)(1) of this section shall be used by DOE or its designated representatives solely for the purpose of evaluating the proposal. The data so marked shall not be disclosed or used for any other purpose except to the extent provided in any resulting assistance agreement, or to the extent required by law, including the Freedom of Information Act (5 U.S.C. 552) (10 CFR Part 1004). The Government shall not be liable for disclosure or use of unmarked data and may use or disclose such data for any purpose.

(4) This process enables DOE to follow the provisions of 10 CFR 1004.11(d) in the event a Freedom of Information Act (5 U.S.C. 552) request is received for the data submitted, such that information not identified as subject to a claim of exemption may be released without obtaining the submitter's views under the process set forth in 10 CFR 1004.11(c)

[76 FR 26581, May 9, 2011]

### § 600.16 Legal authority and effect of an award.

(a) A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.

(b) Recipients are free to accept or reject the award. A request to draw down DOE funds constitutes acceptance; however, DOE may require formal acceptance of an award.

(c) DOE funds awarded under a grant, cooperative agreement, or technology investment agreement shall be obligated as of the date the DOE Contracting Officer signs the award; however, the recipient is not authorized to incur costs under an award prior to the beginning date of the budget period shown in the award except as may be authorized in accordance with §§ 600.125(e), 600.230, 600.317(b), or 603.830 of this part. The duration of the DOE financial obligation shall not extend beyond the expiration date of the budget period shown in the award unless authorized by a DOE Contracting Officer by means of a continuation or renewal

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award or other extension of the budget period.

[61 FR 7166, Feb. 26, 1996, as amended at 70 FR 69254, Nov. 15, 2005; 74 FR 44276, Aug. 28, 2009]

### § 600.17 Contents of Award.

Each financial assistance award shall be made on a Notice of Financial Assistance Award (NFAA) which contains basic identifying and funding information. The NFAA provides the contents of the award including any special terms and conditions, program regulations, the National Policy Assurances, and any other provisions necessary to establish the respective rights, duties, obligations, and responsibilities of DOE and the recipient, consistent with the requirements of this part.

[74 FR 44276, Aug. 28, 2009]

### § 600.18 [Reserved]

### § 600.19 Notification to unsuccessful applicants.

DOE shall promptly notify in writing each applicant whose application has not been selected for award or whose application cannot be funded because of the unavailability of appropriated funds. If the application was not selected, the written notice shall explain why the application was not selected.

[61 FR 7166, Feb. 26, 1996, as amended at 74 FR 44276, Aug. 28, 2009]

### § 600.20 Maximum DOE obligation.

(a) The maximum DOE obligation to the recipient is—

(1) For monetary awards, the amount shown in the award as the amount of DOE funds obligated, and

(2) Any designated property.

(b) DOE shall not be obligated to make any additional, supplemental, continuation, renewal, or other award for the same or any other purpose.

### § 600.21 Access to records.

(a) In addition to recipient and subrecipient responsibilities relative to access to records specified in §§ 600.153, 600.242 and 600.342, for any negotiated contract or subcontract in excess of \$10,000 under a grant or cooperative agreement, DOE, the Comptroller General of the United States, the recipient

and the subrecipient (if the contract was awarded under a financial assistance subaward), or any of their authorized representatives shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to that contract or subcontract, in order to make audit, examination, excerpts, and copies.

(b) The right of access may be exercised for as long as the applicable records are retained by the recipient, subrecipient, contractor, or subcontractor.

[61 FR 7166, Feb. 26, 1996, as amended at 74 FR 44276, Aug. 28, 2009]

### § 600.22 Disputes and appeals.

(a) *Informal dispute resolution.* Whenever practicable, DOE shall attempt to resolve informally any dispute over the award or administration of financial assistance. Informal resolution, including resolution through an alternative dispute resolution mechanism, shall be preferred over formal procedures, to the extent practicable.

(b) *Alternative dispute resolution (ADR).* Before issuing a final determination in any dispute in which informal resolution has not been achieved, the Contracting Officer shall suggest that the other party consider the use of voluntary consensual methods of dispute resolution, such as mediation. The DOE dispute resolution specialist is available to provide assistance for such disputes, as are trained mediators of other federal agencies. ADR may be used at any stage of a dispute.

(c) *Final determination.* Whenever a dispute is not resolved informally or through an alternative dispute resolution process, DOE shall mail (by certified mail) a brief written determination signed by a Contracting Officer, setting forth DOE's final disposition of such dispute. Such determination shall contain the following information:

(1) A summary of the dispute, including a statement of the issues and of the positions taken by the Department and the party or parties to the dispute; and

(2) The factual, legal and, if appropriate, policy reasons for DOE's disposition of the dispute.

(d) *Right of appeal.* Except as provided in paragraph (f)(1) of this section, the