

DRAFT PLAN FOR PUBLIC COMMENT

**U.S. Department of Energy
Office of Energy Efficiency and Renewable Energy
Hydrogen, Fuel Cells and Infrastructure Technologies Program**

**Data Management Plan for
The Controlled Hydrogen Fleet and Infrastructure
Demonstration and Validation Project**

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Introduction

The Hydrogen, Fuel Cells and Infrastructure Technologies Program of the Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy issued a solicitation on May 6, 2003 for the Controlled Hydrogen Fleet and Infrastructure Demonstration and Validation Project. Under this Solicitation, DOE is soliciting Financial Assistance Applications for validation projects that include testing, demonstrating and validating hydrogen fuel cell vehicles and infrastructure and vehicle and infrastructure interfaces for complete system solutions. Each validation project will include a comprehensive safety plan; an activity to assist in developing codes and standards; and a comprehensive, integrated education and training campaign. DOE expects applications to be submitted by either automobile manufacturers or energy companies with teams composed of other organizations including hydrogen suppliers, fuel cell suppliers, utility or gas companies, fleet operators, system and component suppliers, small businesses, universities and government entities. DOE plans to award Cooperative Agreements to the successful applicants for a term of five years beginning in 2004.

The Statement of Objectives (SOO) for the Demonstration and Validation Project requires the collection of data to monitor the performance of the hydrogen vehicles and infrastructure throughout the project period. The SOO sets forth in Tables 1 through 8 of the solicitation, the minimum data sets that shall be collected by the awardees. The data will be collected in a variety of different formats including log information, chassis dynamometer data, vehicle data and maintenance and operations data. Parameters included in Tables 6 through 8 require the collection of detailed dynamic performance data at both the vehicle and component level and the collection of data retrieved from on-board computer data acquisition systems. Raw data shall be submitted to DOE in accordance with the Deliverables Schedule in the Cooperative Agreements.

The purpose of this Data Management Plan is to describe how DOE will handle data submitted by recipients as deliverables under the Controlled Hydrogen Fleet and Infrastructure Demonstration and Validation Project. Each recipient is responsible for marking data in

accordance with the data rights provisions of the Cooperative Agreements, including data that they consider to be proprietary and/or trade secrets.

Definitions

Unrestricted Data - recorded information, regardless of form or the media on which it may be recorded, including technical data and computer software, in which the Government has unlimited rights. The term does not include data incidental to the administration of a Cooperative Agreement such as financial, administrative, cost and pricing, or management information.

Unlimited Rights - the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

Limited Rights Data - data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are set forth in the Limited Rights Notice of subparagraph (g)(2) of the Rights in Data Clause, FAR 52.227-14, contained in the Cooperative Agreements.

Restricted Computer Software - computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of subparagraph (g)(3) of the Rights in Data Clause, FAR 52.227-14, contained in the Cooperative Agreements.

Commercial and Financial Information - information relating to business or trade in which a submitter has a commercial interest.

Restricted Distribution Data - data first produced under a Cooperative Agreement which is specifically protected by statute.

Data Markings

Prior to delivering data to the Government under a Cooperative Agreement, the Recipient has the responsibility to restrictively mark data, if appropriate, in accordance with the Rights in Data Clause, FAR 52.227-14. As applicable, the recipient must affix the Copyright Notice required by subparagraph (c)(1); the Limited Rights Notice required by subparagraph (g)(2); or

the Restricted Rights Notice required by subparagraph (g)(3), of the Rights in Data Clause to data delivered under the Cooperative Agreement. Data delivered to the Government without these markings shall be deemed to have been furnished with unlimited rights and the Government assumes no liability for disclosure, use, or reproduction of such data.

DOE is currently seeking statutory authority to withhold data first produced under the Cooperative Agreements contemplated by this program similar to the protection afforded the technologies developed under the Energy Policy Act (EPACT). Section 3001(d) of EPACT permits the Government to withhold other data first produced under a research, development and demonstration agreement relating to designated technologies for a limited time, i.e., up to five years. Since the solicitation for the Controlled Hydrogen Fleet and Infrastructure Demonstration and Validation Project is issued under the authority of the Hydrogen Future Act of 1996, it does not fall within the ambit of EPACT's data protection provision. However, if data developed in this program under a Cooperative Agreement discloses an invention for which a patent application may be filed or is pending, then the Government is permitted to withhold such data for a limited time to protect the potential patent rights in the invention under the authority of 35 U.S.C. ' 205.

If DOE obtains broad data protection authority for this program similar to EPACT, the Department, with the mutual consent of the Recipients, will identify data first produced under the Cooperative Agreements which may be withheld from public disclosure consistent with program objectives. However, since there currently is no such authority relating to this program, the Limited Rights Data notice and the Restricted Computer Software notice governing the protection of data developed solely at private expense are the only data disclosure restrictions which may be placed on data used in the program. Thus, except for use limitations associated with a Recipient's copyright claims, no other restrictive markings may be placed on data developed solely under this program. However, if data first produced under an agreement embodies pre-existing Limited Rights Data or Restricted Computer Software then it may be marked accordingly to the extent that it cannot be separated from such data.

If any data delivered under a Cooperative Agreement are inappropriately marked with restrictive or limiting markings not authorized by the Rights in Data Clause, the Contracting Officer may either return the data to the Recipient or cancel or ignore the restrictive markings in accordance with the procedures contained in subparagraph (e)(1) of that Clause. The Contracting Officer will make the final agency determination as to whether or not the markings are authorized.

Administrative Controls and Physical Data Protection

In recognition of the sensitivity of the data required to be submitted to the Government as deliverables under the Cooperative Agreements for the Controlled Hydrogen Fleet and Infrastructure Demonstration and Validation Project, DOE will establish administrative and physical data controls that limit access to the data as described below. By doing so, DOE is not waiving its rights in data which are set forth under the Rights in Data clause of the Cooperative Agreements, i.e., Rights in Data - General, FAR 52.227-14 (as modified by DEAR 927.409). DOE intends to use the data developed in this demonstration program for government purposes only in support of programmatic goals. Accordingly, DOE may release to the public composite data used for systems modeling, but DOE will protect and not release raw data received from recipients to the maximum extent allowed under applicable law.

Data will be delivered on compact disc to the Department of Energy, Golden Field Office (GFO) in Golden, CO, in accordance with the Deliverables Schedule in the Cooperative Agreements. The only acceptable medium for data delivery will be compact disc. Recipients shall not deliver data to DOE either in hard copy or electronically. DOE will establish a secure room located at the Golden Field Office in which to store the data. As a federal facility, entry to the Golden Field Office is controlled and limited to individuals with a government-issued identification badge. Outside persons must obtain a visitor's badge before they may gain entry to GFO. In addition, the data room will remain locked at all times with access controlled by key card entry. Access will be limited to those individuals having a legitimate need-to-know as determined by appropriate DOE program officials from the Hydrogen, Fuel Cells and Infrastructure Technologies Program. DOE will maintain a log showing who enters and leaves the room and for what purpose.

The controlled-access room will contain a dedicated server and stand-alone computer work stations, none of which shall be connected to the Internet or to the Local Area Networks at the Golden Field Office or at the National Renewable Energy Laboratory (NREL). The computers will be password-protected. DOE will issue passwords to users under standard computer security procedures. There will be no email access to or from the computer stations. The secure room will contain a printer and a shredder but not a copier. Users will be required to shred any material containing raw data that they have printed during their work. The secure room will also contain locked file cabinets where the CDs will be stored when they are not in use.

DOE will designate one DOE person to be the Hydrogen Demonstration Project Data Manager. This individual will be trained regarding the sensitivity of the data, who is authorized to view the data and the consequences for unauthorized disclosure. He or she will receive the compact discs and transfer their contents to the dedicated server in the data room. The Data

Manager will be responsible for preparing tape back-ups of the computer work stations on a daily basis. The back-up tapes will be stored in a locked, fire safe cabinet in the secure room. Neither compact discs submitted by recipients nor tape backups of data will be removed from the secure data room for any purpose.

The Data Manager will give access to the data room to individuals who can show a legitimate need-to-know as designated by appropriate DOE program officials from the Hydrogen, Fuel Cells and Infrastructure Technologies Program. DOE anticipates that there will be a small number of closely controlled individuals requiring access to the secure room including but not limited to the following: DOE Hydrogen program officials from Headquarters and the Golden Field Office, EPA officials from the Office of Transportation and Air Quality, the DOE contracting officer, approved support service contractor personnel, and approved individuals from the National Renewable Energy Laboratory (NREL) working in their capacity to support the Systems Integrator. All persons with access to the data room will be subject to an appropriate non-disclosure obligation consistent with the objectives of this program. DOE will maintain these procedures until such time as the data may be destroyed.

The Hydrogen Program plans to model composite data for this demonstration project. The Systems Integrator will generate composite data for modeling based on the raw data and consistent with the data room security procedures set out in the foregoing. In order to protect raw data from disclosure to organizations conducting modeling, the Systems Integrator will develop ranges of values for input data required by modelers and will establish a set of values for input parameters to be used by all modelers for the Hydrogen Program based on their analysis of the raw data. Therefore, modelers will not need access to the raw data in the secure data room and data cannot be attributed to particular vehicle(s), systems, or entities.

Interface with EPA

The Environmental Protection Agency (EPA) participated with DOE in developing the Statement of Objectives for DOE's Controlled Hydrogen Fleet and Infrastructure Demonstration and Validation Project. In particular, EPA contributed to the data collection tables set forth in Appendix C of the Solicitation which require extensive testing of vehicles. EPA has a facility at its National Vehicle and Fuel Emissions Laboratory (NVFEL) in Ann Arbor, Michigan where the required testing may be performed. DOE anticipates entering into an appropriate Interagency Agreement (IAA) with the EPA consistent with the objectives of this program to provide funding for the Recipients using the EPA's facility on a task order basis. Any disclosure of data from the vehicles participating in DOE's program, whether in the form of technical papers or otherwise, will require notification to and prior approval by DOE. DOE will share with EPA data developed under the Cooperative Agreements as necessary for government purposes.

Freedom of Information

The Freedom of Information Act, 5 U.S.C. ' 552, is a federal statute which generally requires Agencies to disclose information in the Government=s possession upon a request from the public. There are several exemptions to the disclosure requirements including exemption 3 for Amatters specifically exempted from disclosure by statute. ...@ 5 U.S.C. ' 552(b)(3) and exemption 4 for Atrade secrets and commercial or financial information obtained from a person and privileged or confidential.@ 5 U.S.C. ' 552(b)(4). As noted previously, DOE is currently pursuing a statutory information and data protection provision for the Hydrogen Program that would allow DOE to withhold data and information developed under this program from public disclosure for up to five years after the information is developed, if such information is of a character that it would be protected under FOIA exemption 4. Under the proposed statutory provision, any information developed pursuant to a cost-shared Agreement entered into under the Hydrogen Future Act for research, development or demonstration would qualify for protection from disclosure based on FOIA exemption 3.