

## ATTACHMENT 1

### Funding Program Request for Extended Period of Data Protection

*This form should be completed by the DOE/NNSA funding program. All text in blue should be replaced with the appropriate information and removed before the document is finalized.*

#### 1. Background

This form is intended to facilitate the request and approval of an extended data protection period of up to thirty years for Protected Data for awards or agreements under a Notice of Funding Opportunity (NOFO) or other announcement. Protected Data means technical data or commercial or financial data first produced in the performance of the award or agreement which, if it had been obtained from and first produced by a non-federal party, would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of 5 U.S.C. § 552(b)(4) and which data is marked as being protected data by a party to the award or agreement.

To be eligible for extended data protection, the award must fall under the Energy Policy Act of 1992 and 2005 (EPAc)<sup>1</sup> or Other Transaction Authority under 42 U.S.C. § 7256(g).

For awards under EPAc authority, an extended period of data protection (for more than five years and not to exceed thirty years after development of information) is authorized if DOE/NNSA “determines that the nature of the information protected against dissemination, including nuclear technology, could reasonably require an extended period of that protection to reach commercialization” in accordance with 15 U.S.C. § 3710a(c)(7)(B)(ii).

For other transaction agreements, an extended period of data protection (for more than five years and for up to thirty years after the date on which the information is developed) is only authorized “if the Secretary determines that the nature of the technology under the transaction, including nuclear technology, could reasonably require an extended period of protection from disclosure to reach commercialization” in accordance with 42 U.S.C. § 7256(g)(5)(A)(ii).

#### 2. NOFO Title, Number, and Brief Description of Anticipated Work

*Provide the NOFO number and title, a brief description of the NOFO, and a description of the anticipated work to be conducted under the resulting award(s).*

#### 3. Description of Categories of Protected Data, Requested Protection Period, and Justification

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<sup>1</sup> See individual program authorizations and/or Sec. 902(a) of EPACT which states states:“(a) IN GENERAL.—In order to achieve the purposes of this title, the Secretary shall conduct a balanced set of programs of energy research, development, demonstration, and commercial application with the general goals of— (1) increasing the efficiency of all energy intensive sectors through conservation and improved technologies; (2) promoting diversity of energy supply; (3) decreasing the dependence of the United States on foreign energy supplies; (4) improving the energy security of the United States; and (5) decreasing the environmental impact of energy-related activities.”

A funding program request for extended data protection may be made for Protected Data under one or more awards under a single NOFO, all awards under a single NOFO, certain categories of data/technology under a single NOFO, a particular NOFO topic area, or awards not under a NOFO. In addition, a funding program request may be directed to multiple NOFOs, certain categories of data/technology across multiple awards and NOFOs, or entire projects/programs (referred to as a “class extended data protection request”).

This extended data protection request must demonstrate to the satisfaction of the DOE/NNSA Grants Officer and DOE/NNSA Patent Counsel that the requested protection period could be reasonably required to reach commercialization. The justification provided may address factors such as the maturity of the technology, development timeframe, market and economic considerations, competitiveness concerns, technical issues, national and economic security issues, e.g., the risk of malign foreign actors acquiring such information/technology (and thus negatively impacting the ability of the recipient to commercialize the technology), or any other reason why the requested period of protection is reasonably required for commercialization.

*Unless Program is requesting a blanket extension of the protection period for all Protected Data first produced in performance of a NOFO or award, in a table or similar format as illustrated below, please describe the categories of Protected Data and identify the corresponding requested protection period along with a brief justification. Additional justification can be provided in the next section.*

Requested Protection Period (Not to exceed 30 years)	Description of the Protected Data	Justification
[Example: 7]	[Example: Prototype equipment data including design details and drawings, specifications, pressure relief system design and calculations, heat integration performance/study results]	[INSERT]
[Example: 10]	[Example: Economic models, with updated contractual or estimated costs]	[INSERT]

**4. Additional Justification**

*Please provide any additional justification for this request.*

**5. Other Considerations**

*Please address how DOE/NNSA and the public’s interests are appropriately balanced given DOE’s limited rights to disclose, publish, and disseminate such Protected Data during the extended data protection period.*

**6. Determination**

For the reasons stated above, the funding program believes that it has met the requirements for requesting an extended period of data protection and adequately justified such a request. Accordingly, the funding program hereby seeks approval of this request.

**DOE/NNSA PROGRAM REQUESTOR:**

\_\_\_\_\_  
[NAME]

\_\_\_\_\_  
DATE

\_\_\_\_\_  
[TITLE: TECHNOLOGY OFFICE DIRECTOR, PROJECT DIRECTOR, PROGRAM DIRECTOR, DEPUTY ASSISTANT SECRETARY, ASSISTANT SECRETARY OR OTHER APPROPRIATE MEMBER OF PROGRAM LEADERSHIP]<sup>2</sup>

**CONCURRENCE:**

\_\_\_\_\_  
[NAME]  
COGNIZANT DOE/NNSA PATENT COUNSEL<sup>3</sup>

\_\_\_\_\_  
DATE

**DOE/NNSA OR SECRETARY/AUTHORIZED DELEGATE APPROVAL:**

\_\_\_\_\_  
[NAME]  
NOFO OR AWARD GRANTS OFFICER<sup>4</sup>

\_\_\_\_\_  
DATE

**Attachments**, if applicable

[INSERT]

Dispositions of all extended data protection requests should be retained in the applicable award case file.

<sup>2</sup> The appropriate level of the Program Requestor will vary with the nature of the request. Class extended data protection requests should be approved by a suitable level such as the Assistant Secretary, the Deputy Assistant Secretary or Acting Assistant Secretary, with concurrence from GC-62 Assistant General Counsel.

<sup>3</sup> A signature line for DOE/NNSA program counsel and/or GC-62 Assistant General Counsel may also be included, as appropriate.

<sup>4</sup> GO approval may be provided here or as part of a funding program’s existing notice of funding opportunity approval processes.