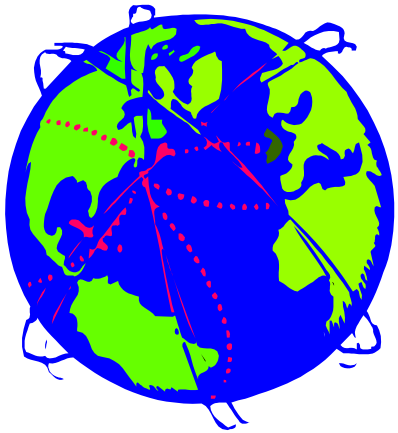
United States
Department of Energy

# INTERNATIONAL AGREEMENTS HANDBOOK



Updated August 2000

Office of International Affairs

# Table of Contents


# *Acknowledgements*

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Civilian Radioactive Waste Management
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Energy Research
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Fossil Energy
National Security and Nonproliferation
Nuclear Energy, Science and Technology

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The General Counsel's expertise and dedication to ensuring that accurate and timely information was incorporated into this Handbook was invaluable.

Chapter I

# Introduction

THIS HANDBOOK WAS DEVELOPED and revised as part of an ongoing effort by the U.S. Department of Energy (DOE), Office of International Science and Technology Cooperation (IA-41), Office of International Affairs, to improve the DOE's international agreement process. It includes an overview of the DOE international agreements program, step-by-step guidelines for initiating, evaluating and reviewing international agreements and relevant support documentation, including contact lists, excerpts from relevant legislation and sample agreements. The handbook provides a useful working reference for both new and more experienced DOE staff who are responsible for their Program Office's bilateral agreements.

While DOE manages a large number and variety of bilateral and multilateral international agreements, this handbook focuses only on the bilateral agreements. DOE is cooperating with approximately 39 countries under approximately 280 bilateral energy research and development agreements. Most of these agreements involve one or more of the following forms of cooperation:

exchange of information; exchange of samples, materials, instruments, and components for testing; exchange of scientists, engineers, and other specialists; short visits by individual specialists or teams of specialists; seminars and other meetings; and joint projects in which each party shares the work and costs.

These agreements fall into six broad categories that include: general science and technology or research and development; exchange of technical information; nuclear fission; fusion and high energy physics; fossil energy; renewables, conservation, and related topics. The agreements are managed within the various DOE Program Offices according to subject matter of the agreement. IA-41 is responsible for providing guidance and coordination to the process of developing, managing, evaluating, and renewing all agreements in a way that is consistent with the policy objectives of DOE and the U.S. Government.

The management of DOE's international agreements requires that a great deal of flexibility and discretion be left to managers and researchers in the Program Offices. No two international research ventures are exactly alike, nor is the relationship of the U.S. to any two foreign governments alike. The international science and technology agreements in the DOE's portfolio reflect these differences and the necessary variations in the agreement text that each situation requires. Thus, while this handbook contains guidelines and other reference materials, and although its goal is to bring a higher degree of order and consistency to the management of DOE's international agreements, it does not constitute an attempt to standardize the agreements themselves or the Program Offices' handling of them.

The following is a brief synopsis of the contents of the handbook: ***Chapter II*** of this handbook provides an overview of the role of international agreements in DOE and its Program Offices, a description of the major forms of bilateral agreements that DOE may enter into (examples of which are included in the Sample Agreements, Appendix D), and a brief overview of the Department of State's Circular 175 procedure.

***Chapter III*** presents a comprehensive set of criteria and questions to be addressed by the Program Offices in considering the creation of new bilateral agreements or renewing existing agreements.

***Chapter IV*** discusses the process for initiating a new bilateral international agreement and ***Chapter V*** discusses the process for renewing an existing agreement. **Chapters IV** and **V** include a fold-out flowchart that depicts the step-by-step process presented in those Chapters. In addition, these chapters include the role of the Office of the Under Secretary in the agreement process.

The handbook's Appendices provide: ***Appendix A*** -- a current listing of international agreement contacts at DOE; ***Appendix B*** -- a more detailed treatment of the Circular 175 review and agency concerns; ***Appendix C1, C2 and E*** -- documents describing specific legal and policy requirements for DOE international agreements; and ***Appendix D*** -- a selection of sample agreements.

This handbook has been prepared and updated to help facilitate a full range of activities that are required under this program. The handbook is intended to be a "living document" that will continue to be updated as needed. Suggestions and comments for improvement are invited and welcomed at any time.

A suggestion form is included in a folder appended at the end of the handbook for your use in providing comments and suggestions for improving the next version of the handbook. After you have had a chance to work with the handbook, please consider the questions posed in this one page form and send your ideas, comments, and suggestions to:

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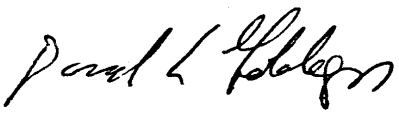
Also, for your convenience, we have provided, at the end of this handbook, a disk which provides you with the agreement questionnaire in several word processing formats.



David L. Goldwyn
Assistant Secretary
Office of International Affairs

Chapter II

# Overview

THIS CHAPTER CONTAINS IMPORTANT background information on international agreements for DOE Program Office staff. It includes a discussion of the current and historic roles of DOE international agreements, detailed descriptions of several common forms of international agreements in which DOE is involved, and a discussion of the Department of State's interagency "Circular 175" review process for international agreements.

## The Role of DOE International Agreements

International S&T relationships have become an integral part of the overall U.S. foreign policy and provide a means of more effectively achieving our national goals. Cooperation in science and technology plays a vital role in the nonproliferation of weapons of mass destruction, arms control, meeting the challenges of global threats and large-scale problems, providing a framework for promoting sustainable development, and strengthening the economic ties that underlie global stability.

Historically, agency-level international agreements have been important tools in the

implementation of U.S. foreign policy. Throughout the Cold War, the relationships that were established through international science and technology agreements served as vehicles for strengthening ties with allies, and also as sources of stability and cooperation with adversaries in tense times. In addition, through international agreements, U.S. researchers have gained access to unique facilities, equipment, and conditions not available domestically.

The end of the Cold War resulted in a reordering of U.S. foreign policy, in which issues that formerly were less conspicuous on the policy agenda, such as international trade policy, have come to the fore. While international agreements played primarily a diplomatic role during the Cold War, they now are increasingly recognized as instruments of international economic policy, and as means of leveraging scarce domestic research dollars with those of foreign countries. Thus, the relevance of international agreements to U.S. policy has changed in the post-Cold War environment in at least three important ways.

- First, international science and technology agreements are now viewed as potentially valuable instruments of U.S. economic competitiveness, a concern that has assumed a leading role in U.S. policy in the past few years. International agreements in this context provide U.S. scientists with opportunities to gain access to, and build upon, other nations' research in areas that may have commercial value to the U.S.

- Second, international agreements have helped to establish relationships that are essential in addressing many large-scale contemporary problems that are beyond the ability and resources of the U.S. or any individual nation. Problems such as AIDS, global climate change, and the proliferation of nuclear materials are a few examples.

- Third, in an era of declining public research budgets, international agreements offer an avenue by which publicly funded research can be leveraged through information-sharing and technology cooperation.

**Forms of International Agreements**

Cooperation between DOE and other nations can occur via any of several types of formal international agreements. Below are descriptions of several forms of international agreements. In additional, several sample international agreement texts are included in Appendix D.

- Science and Technology Umbrella Agreement (S&T Umbrella) - an agreement concluded by the U.S. and a foreign country, signed by (1) the President of the United States, the Secretary of State, or the Secretary's designee, and (2) a representative of the head of state or government of the partner country. An S&T umbrella establishes a formal framework for collaboration in science and technology research and development between the two countries and signifies a willingness and desire on the part of the governments of both nations to collaborate to this end. An S&T umbrella agreement typically does not specify particular technical projects in which joint research and development will occur, nor does it indicate other modalities of cooperation (e.g., technical agencies involved, management and financial arrangements).

- Technical Agency Bilateral Science and Technology Umbrella Agreement[1/] - an agreement to which a technical agency of the U.S. Government and a technical agency of a foreign government are

[1/] An S&T Umbrella Agreement also may be referred to as a Memorandum of Understanding (MOU)

parties, and which is usually signed by Cabinet-level officials. A technical agency umbrella establishes a formalized framework for science and technology cooperation between the Parties. Although the umbrella agreement usually does not discuss the specific technical areas in which collaboration will occur, it may contain specific conditions of a legal or administrative nature that will then apply to activities undertaken via subsidiary agreements in specific technical areas. For example, in establishing new umbrella S&T agreements, DOE seeks to include provisions for the allocation and protection of intellectual property that might result from cooperative ventures undertaken by the Parties. Inclusion of such provisions in the text of the umbrella agreement obviates the need for their negotiation on a case-by-case basis with each subsidiary agreement, instead requiring that the text of the subsidiary agreement contain a simple reference to the provisions in the umbrella.

- Technical Agency Bilateral Science and Technology Subsidiary Agreements - an agreement to which a programmatic element of DOE and an agency of a foreign government, with which DOE has concluded a bilateral umbrella agreement, are parties. Subsidiary agreements are drafted and negotiated by the cognizant Program Office staff members, in consultation with IA-41, the Office of General Counsel, and the proposed foreign partner agency, and are usually signed by the Assistant Secretary, or equivalent, of the relevant Program Office. Subsidiary agreements are binding agreements that describe, in detail, the technical areas, tasks, and duration of collaboration, and specify the administrative and financial terms of the agreement. If the bilateral umbrella agreement does not cover intellectual property rights (IPR) provisions, the IPR will be covered in the subsidiary agreement .

- Freestanding Technical Agency Bilateral Science and Technology Agreement - an agreement similar to the subsidiary agreement described above, but which is concluded in the absence of a DOE science and technology umbrella. Freestanding agreements often require the inclusion of provisions that would normally be incorporated in an umbrella agreement. For instance, provisions for the protection and allocation of intellectual property, which are often incorporated in the text of umbrella agreements, would need to be included in the text of the freestanding agreement.

- Statement of Intent - an undertaking usually signed by the Secretary of Energy (though it can be signed at the Assistant Secretary, or equivalent, level) and an official of comparable status from a foreign agency stating that DOE and the respective foreign agency wish to collaborate in S&T projects in specified or unspecified technical areas. Statements of Intent frequently are signed by the Secretary during missions abroad, and are intended to prepare the way for collaboration with nations with which the U.S. or DOE does not have umbrella agreements. A Statement of Intent is not an international agreement and thus does not obligate the U.S. or the foreign government to any specific action, but instead simply expresses a mutual desire to work together in the future. Statements of Intent usually do not have an expiration date.

## The Department of State's Circular 175 Procedure for Interagency Review of International Agreements

Because of the important role of international agreements in U.S. foreign policy, various agencies in the U.S. government have interests in DOE's international agreements and are included in the process of

reviewing them. The interagency review of DOE international agreements is conducted by the Department of State as part of its responsibility to oversee and coordinate foreign policy in the United States. This process, which is referred to as the Circular 175 review, is a means by which the government can ensure that a particular collaborative arrangement is consistent with U.S. foreign policy objectives. It also provides the federal government with a means of tracking funding of international agreements.

In addition to the Department of State, agencies reviewing DOE's international agreements usually include the Department of Commerce, the Office of the U.S. Trade Representative (USTR), the Office of Science and Technology Policy (OSTP), and the Office of Management and Budget (OMB). Other agencies, such as the Nuclear Regulatory Commission and the Department of Defense may also review particular agreements, as appropriate.

The Circular 175 review provides a formalized process by which many different forms of international agreements, with a wide variety of partners, can be assessed. The Department of State Circular of December 13, 1955, as amended, is codified in the Foreign Affairs Manual. The objectives of the procedure are to ensure that the making of treaties and other international agreements are in accordance with legal authorities and to provide for appropriate review by the Department of State and Congress, as appropriate, to ensure that agreements are consistent with policy objectives. IA-41, in consultation with the Office of General Counsel, will confer with the Department of State to determine whether specific DOE undertakings are "agreements" requiring formal Department of State review.

As each agreement and each relationship with a foreign country is unique, each must be examined on a case-by-case basis. Yet, there

are several issues that are of consistent interest to the U.S., and consequently to the Circular 175 reviewers. Among these issues are the intellectual property rights implications of international agreements, mutual access to each other's facilities, information, and expertise that the U.S. receives for its investments in international agreements.

In all cases, IA-41 and the Office of General Counsel, **must** be consulted regarding the Circular 175 process, prior to the establishment or renewal of the Department's agreements.

The Case-Zablocki Act (1 U.S.C. 112b) provides that an agency may not sign or otherwise conclude an international agreement on behalf of the United States without prior consultation with the Secretary of State. The Secretary of State has the authority to define what constitutes an "international agreement" and to issue regulations implementing the Act. These regulations, which apply to all federal agencies, including DOE, are set forth in 22 CFR Part 181.

*Criteria for Determining What Constitutes an International Agreement*

The implementing regulations and Circular 175 set forth the criteria that the Department of State Legal Adviser will consider in determining whether an undertaking, oral agreement, document, or set of documents, including an exchange of notes or of correspondence, constitutes an international agreement within the meaning of the Case-Zablocki Act. The regulations provide that each of the following criteria must be met in order for any undertaking of the U.S. to constitute an international agreement.

1. Identity and intention of the parties. A party to an international agreement must be a state, a state agency, or an

intergovernmental organization. The parties must intend their undertakings to be legally binding, not merely of political or personal effect, and be governed by international law.

2. Significance of the arrangement. Minor or trivial undertakings are not considered international agreements.

3. Specificity, including objective criteria for determining activities. International agreements require precision and specificity in the language setting forth the undertakings of the parties. Intent of the parties is a key factor.

4. Necessity for two or more parties. Unilateral commitments do not constitute international agreements.

No undertaking determined by the Department of State Legal Advisor, based upon these criteria, to be an international agreement may be negotiated or concluded without the approval or opinion of the Secretary of State. Implementing Arrangements that satisfy these criteria may be international agreements subject to the review process; however, if the terms of the implementing arrangement are closely anticipated and identified in the umbrella agreement, then only the umbrella agreement requires Circular 175 review.

IA-41, in consultation with the Office of General Counsel, may confer with the Department of State concerning undertakings, such as Statements of Intent and Memorandum of Understandings which do not require Department of State approval.

Finally, extensions and modifications of international agreements that originally required Circular 175 review also must undergo the Circular 175 review.

Chapter III

# Evaluating International Agreements

THIS CHAPTER CONTAINS DOE's criteria for the evaluation of international agreements. The criteria presented here should be used by Program Office staff who are entering into new international agreements as well as by those seeking to renew existing ones.

Evaluation criteria are the qualitative and quantitative standards by which the effectiveness of agreements will be measured. Corresponding to the criteria is an evaluation questionnaire that Program Office staff can use in gathering information that will help them in deciding whether the evaluation criteria have been satisfied. This process will help Program Office staff to assess the technical merit and the policy relevance of DOE's international agreements. The criteria listed here are a set of *minimum* guidelines that apply to all DOE international agreements. While Program Office staff ought to consider these criteria in entering into new agreements, they ***must*** complete the following evaluation questionnaire and submit it to IA-41 prior to renewal of existing international agreements or the submittal of new international agreements.

## BROAD EVALUATION CRITERIA

1. The agreement and its related activities fit within the mission and objectives of the initiating Program Office.

2. The agreement and its related activities contribute to the accomplishment of DOE's overall mission and goals, and to U.S. policy objectives.

3. The agreement and its related activities provide scientific and/or other benefits that justify the costs of the agreement to DOE and the U.S.

## *EVALUATION QUESTIONNAIRE FOR INTERNATIONAL AGREEMENTS*

1. **The international agreement fits within the objectives of the initiating Program Office.**

*What are the goals of the agreement?*

- What are the technical goals and policy goals?
- What are the specific outcomes (milestones)?
- What are the anticipated products?
- Are there other non-technical objectives?

2. **This international agreement fits within DOE's overall objectives and within U.S. national policy objectives.**

*How does this agreement support DOE's Strategic Plan?*

*What are the implications for U.S. economic competitiveness?*

- Will technologies be transferred (in either direction)?
- Is there potential for commercial loss to U.S. firms?
- Will exports of U.S. goods and services be enhanced?

*What are the environmental implications of the activities under the agreement?*

3. **This international agreement provides benefits that justify the costs to DOE and to the U.S. Government**

*What are the identifiable benefits of the agreement? (to the U.S.? to DOE? to the bilateral partner?)*

- What economic gains or savings will result from the activities?
- What was or will be accomplished that could not be done by the U.S. alone?
- What new scientific and technical information will result?
- What other benefits might flow from this agreement (e.g., time savings, access to unique facilities)?
- What are the potential benefits?

*What costs have been and will be incurred?*

- What are the manpower costs?
- What are the travel costs?
- What are the material resources costs?
- What are the amounts and sources of funding?

*Are adequate resources available to accomplish the goals and objectives of the agreement?*

*How are the costs shared with the bilateral partner?*

*What are the potential political or other non-monetary costs?*

Chapter IV

# International Agreement Initiation Process

THIS SECTION CONTAINS INFORMATION to aid DOE Program Office staff to initiate new international agreements. It includes:

- DOE Office of General Council guidance on the drafting of new international agreements.

- A step-by-step description of the international agreement initiation process that also outlines the roles and responsibilities of several DOE offices and other U.S. Government agencies with regard to the initiation of new international agreements (and an accompanying flow diagram).

## DOE Office of General Council Guidance on the Drafting of New International Agreements

Program Offices are responsible for developing drafts of international agreements that they initiate. Program Office staff should do this in close coordination with the Office of International Science and Technology Cooperation (IA-41). Before beginning to

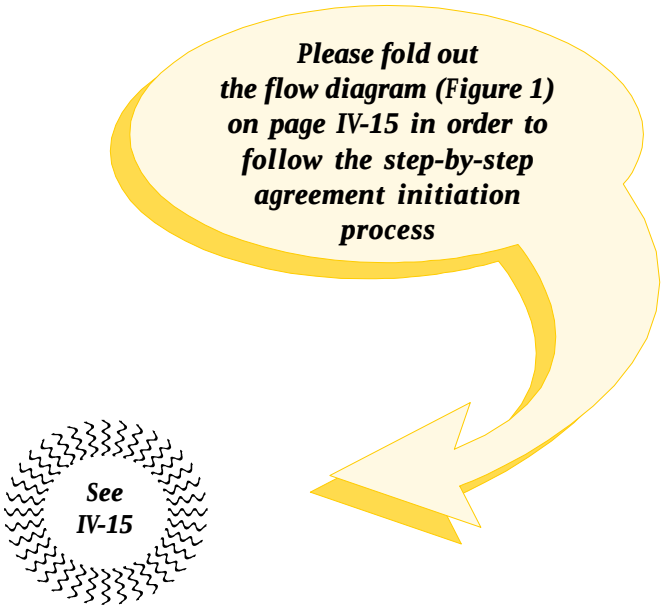
draft an agreement, Program Offices should consult IA-41, particularly on whether the use of a legally-binding international agreement is necessary, and on the appropriate form of agreement to be drafted (e.g., implementing arrangement, annex, exchange of letters). In the course of consultation with IA-41, Program Offices also should seek guidance in the following areas, in light of the scope and nature of the activity and programmatic requirements:

- whether the draft contains all necessary provisions appropriate for the cooperation desired, among them provisions on management, allocation of intellectual property and protection of business-confidential information; exchange of personnel, equipment and materials; and financial provisions; and

- whether the draft contains language that clearly and adequately describes the background, scope and objectives, fields and areas of cooperation. Program Offices should give particular attention to these provisions.

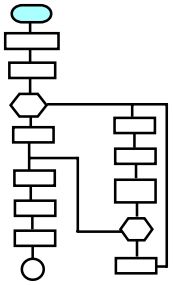
**Step-by-step International Agreement Initiation Process**

The international agreement initiation process involves several components of DOE (the Under Secretary, Program Offices, IA-41, and the Office of General Counsel) and several external U.S. Government agencies as well (Department of State, Department of Commerce, Office of Science and Technology Policy, Office of the U.S. Trade Representative, Office of Management and Budget, and sometimes others). A flow diagram (Figure 1) illustrating this process is located at the end of this Chapter.


Please fold out
the flow diagram (Figure 1)
on page IV-15 in order to
follow the step-by-step
agreement initiation
process
See
IV-15

**STEP 1**

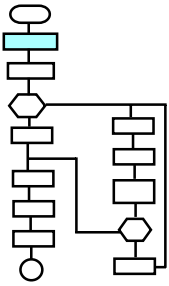
**Program Office decides to seek new international agreement**



International agreements often arise from the need or desire of researchers in DOE Program Offices to collaborate with researchers from other nations in specific technical areas. DOE scientists may initiate the international agreement process through informal discussions with the bilateral partner concerning the proposed agreement's technical scope. It is important to note that these early consultations with the proposed bilateral partner do not constitute formal negotiations. The draft text of the agreement should not be shared with the bilateral partner at this time in order not to preempt subsequent negotiations of terms and conditions, although the general contents of the text may be discussed.

**STEP 2**

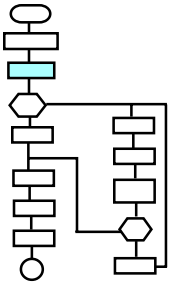
**Program Office notifies IA-41 of proposed collaboration**



The Program Office must notify IA-41 early in the international agreement initiation process to enable IA-41 to facilitate review of the draft by the Office of General Counsel and to obtain Department of State authorization to negotiate and sign the agreement. Once aware of the Program Office's intended collaboration, IA-41 can work with the Program Office to anticipate any policy-related questions or concerns that might arise in relation to the Circular 175 review, or to collaboration with specific countries. Appendix A contains a list of IA-41 contacts. Program Office staff should contact the IA-41 desk officer responsible for the country with which the agreement will be concluded.

**STEP 3**

**Program Office drafts text of international agreement**

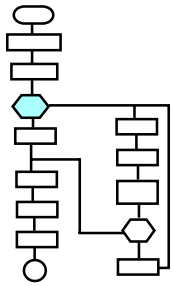


The text of the agreement will vary depending upon its purpose and scope. Appendix D contains several actual DOE international agreements and illustrates some of the forms of international agreements. Program Office staff should consult with IA-41 concerning drafting requirements, and submit the draft to IA-41 once it has been prepared.

Also, in drafting new agreements, Program Office staff should review and carefully consider the international agreement evaluation questions and criteria presented in this handbook (see Chapter III). A copy of the questionnaire, enclosed in this handbook, **must** be filled out and submitted to IA-41 along with the draft new agreement.

**STEP 4**

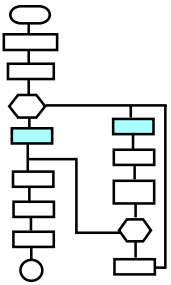
**IA-41, in consultation with the Office of General Counsel, decides if Circular 175 review is required**



The Office of General Counsel advises IA-41 on the legal implications of the international agreement, and assists in determining whether or not Circular 175 review is necessary (see Chapter II, Circular 175 review). A Circular 175 review is more likely to be required if the agreement is intended to be legally binding on the parties and the agreement raises intellectual property rights issues. If, following consultation with the Office of General Counsel, IA-41 determines that Circular 175 review is necessary, the Assistant Secretary for Interantional Affairs (IA-1), with concurrence of the cognizant Program Secretarial Officer, sends a copy of the proposed international agreement to the Under Secretary of Energy for review [Steps 5-6] prior to submitting to the Department of State's Bureau of Oceans and International Environmental and Scientific Affairs [Step 7]. If a Circular 175 review is not required, the Program Office conducts negotiations with the bilateral partner once IA-41 receives clearance from the Office of the Under Secretary [Step 11].

**STEPS 5-6**

**Assistant Secretary International Affairs (IA-1), with concurrence from the cognizant Program Secretarial Officer(s), forwards the proposed agreement to the Under Secretary for review prior to conducting negotiations or seeking Circular 175 authority**

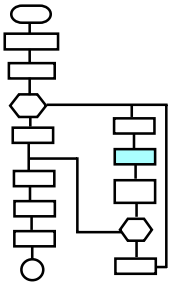


After a determination has been made by IA-41 and the General Counsel, and prior to the conducting of formal negotiations, or seeking Circular 175 authority, a copy of the draft agreement, along with the completed questionnaire, **must** be forwarded by IA-1, with concurrence of the cognizant Program Secretarial Officer(s) to the Office of the Under Secretary for S-3 review.

Request for Circular 175 authority by IA-41, or formal negotiations by the Program Office, in coordination with IA-41 and the General Counsel, cannot commence until after IA-41 has received a clearance on the proposed agreement by the Under Secretary or his/her designee.

**STEP 7**

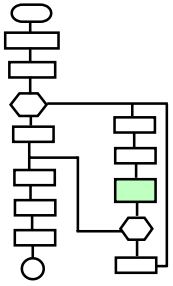
**IA-41 forwards the draft international agreement to the Department of State (if Circular 175 review is necessary)**



IA-41 prepares a memorandum requesting Circular 175 review and sends it and the draft agreement (non-nuclear cooperation) to the Bureau of Oceans and International Environmental and Scientific Affairs within the Department of State. If the proposed agreement relates to nuclear cooperation, the request for Circular 175 authority is submitted to the Bureau of Political-Military Affairs. A copy of the Circular 175 request memorandum is also sent to the DOE Program Office staff member responsible for the international agreement and the Office of the General Counsel. IA-41 serves as the liaison for communications between the Program Office and the Department of State.

**STEP 8**

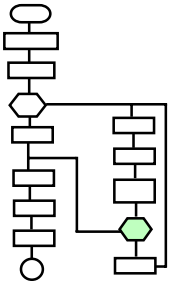
**Department of State circulates agreement for Circular 175 review**



In conducting the Circular 175 review, the Department of State consults a number of U.S. Government agencies prior to granting DOE or any agency authority to negotiate and sign an international agreement. In most cases, these reviewing agencies are the Office of Science and Technology Policy, the Office of Management and Budget, the Department of Commerce, and the Office of the U.S. Trade Representative. In a few cases, depending on the nature, sensitivity, and project scope of the agreement, additional agencies, such as the Department of Defense or the U.S. Nuclear Regulatory Commission, also might be consulted. Each of these agencies has different interests and concerns in reviewing international agreements. The main considerations of each of the five primary Circular 175 review agencies are listed in the Circular 175 review appendix of this document (Appendix B). The Circular 175 process averages two months, though it can take less time or more time, depending on the urgency and/or complexity (including intellectual property rights provisions) of the agreement.

**STEP 9**

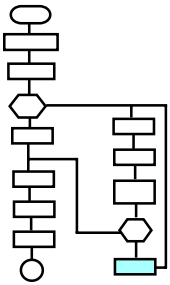
**Department of State decides whether to grant authorization to negotiate and sign the international agreement**



Following Circular 175 review, if the Department of State authorizes DOE to negotiate and sign the international agreement, the IA-41 desk officer notifies the Program Office of the decision. If authorization is granted, the Program Office conducts formal negotiations with the bilateral partner [Step 11]. If authorization is not granted, the Program Office and IA-41 consider revising the agreement in line with Circular 175 agencies' recommendations [Step 10].

**STEP 10**

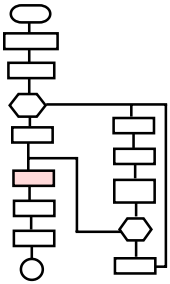
**Program Office and IA-41 revise the international agreement draft, if necessary**



In cases where this authorization is not granted by the Department of State, IA-41 works with the Program Office to make the necessary revisions to the agreement draft and to re-submit it for Circular 175 [Step 7].

**STEP 11**

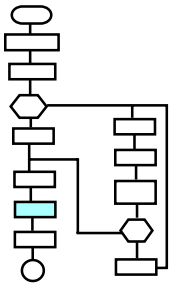
**Program Office conducts negotiations with the bilateral partner**



Formal negotiations with the bilateral partner begin, following the receipt of Department of State authorization by the Program Office. If, in the course of formal negotiations, changes are made to the international agreement text, these changes might be subject to Department of State review. The Program Office must consult IA-41 to determine what review actions are necessary under these circumstances.

**STEP 12**

## IA-41 drafts and circulates signature authority memorandum for concurrence

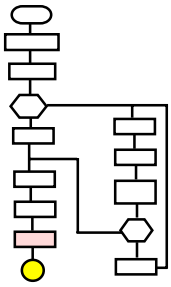


IA-41 drafts the signature authority memorandum on behalf of the Assistant Secretary for International Affairs. This memorandum is sent by IA-41 for the concurrence of the Deputy Assistant Secretary for International Energy Cooperation, the Principal Deputy Assistant Secretary for International Affairs, and finally the Assistant Secretary for International Affairs. The Assistant Secretary for International Affairs then sends the memorandum to the appropriate Program Secretarial Officer granting signature authority (Step 13) and advising that one original, signed copy of the agreement **must** be returned to IA-41 by the Program Office for archiving.

**NOTE:** If the agreement is signed in both English and the bilateral partner's national language, a signed original in each language must be returned to IA-41.

**STEP 13**

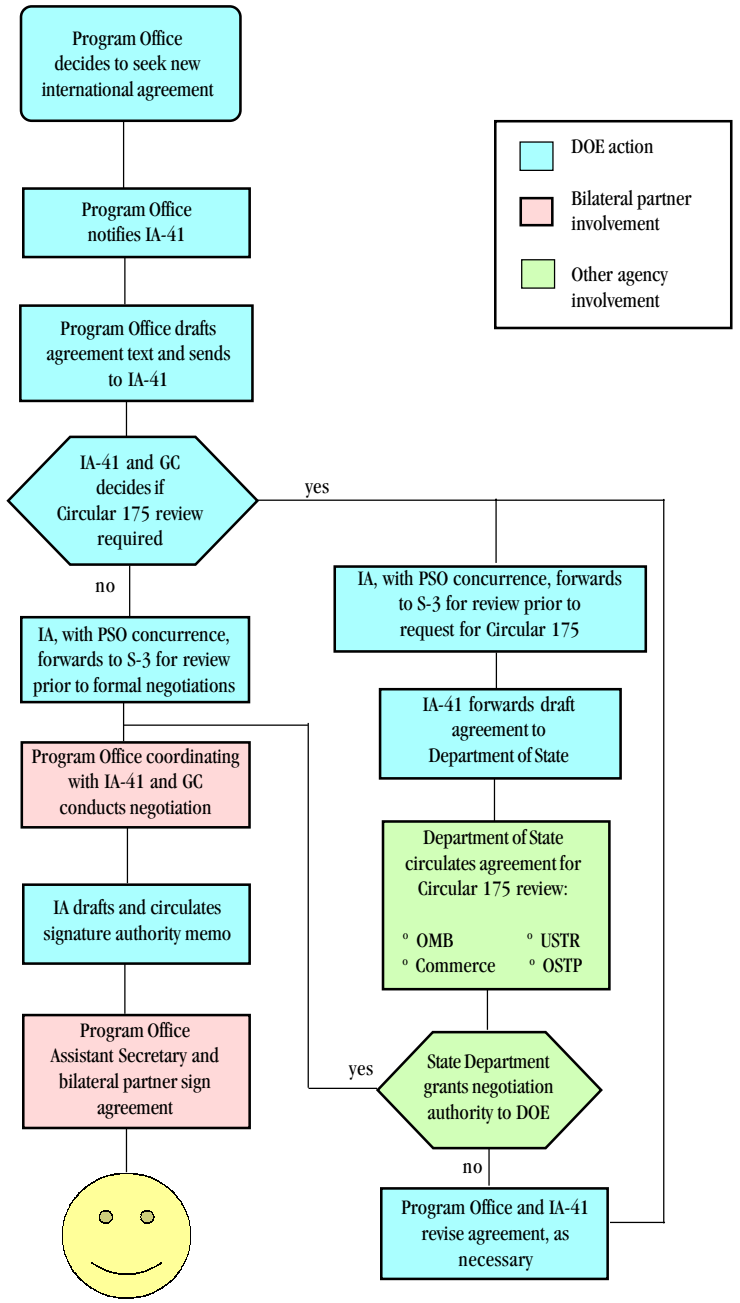
**Program Secretarial Officer, or designee, and the bilateral partner sign the international agreement**



Prior to signature, if the agreement is prepared in two languages, copies in each language of the agreement must be forwarded by IA-41 to the Department of State for language conformance review. Once conformance of the languages is completed, signature by the Program Secretarial Officer and the bilateral partner may take place. An original signed copy, in each language, must then be forwarded to IA-41 for retention in the Department's international agreements archive file.

When the occasion arises where an agreement is in two languages, the Program Office is responsible for the fees charged to the Department of Energy by the Department of State for this service. The Program Office should be prepared to provide IA-41 with funding citations at the time language conformance services are requested of the Department of State.

# FIGURE 1
## Flow Diagram of DOE's International Agreement Initiation Process



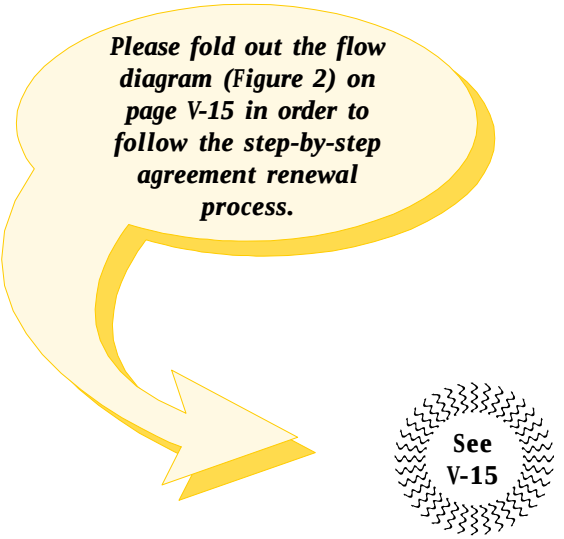
Chapter V

# International Agreement Renewal Process

THIS CHAPTER CONTAINS INFORMATION to aid DOE Program Office staff in renewing existing international agreements. It includes a step-by-step description of an international agreement renewal process that also outlines the roles and responsibilities of several DOE offices and other U.S. government agencies with regard to international agreement renewal.

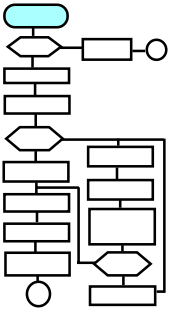
## Step-by-step International Agreement Renewal Process

The international agreement renewal process involves several components of DOE (the Under Secretary, Program Offices, IA-41, and the Office of General Counsel) and several other U.S. Government agencies as well (the Department of State, Department of Commerce, Office of Science and Technology Policy, Office of the U.S. Trade Representative, Office of Management and Budget, and sometimes others). A flow diagram (Figure 2) illustrating this process is located at the end of this chapter.


Please fold out the flow diagram (Figure 2) on page V-15 in order to follow the step-by-step agreement renewal process.
See V-15

**STEP 1**

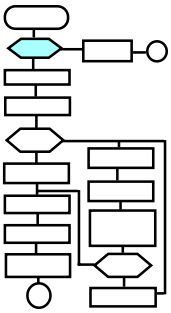
**IA-41 notifies Program Office of upcoming international agreement(s) expiration**



Six months prior to the expiration of an international agreement, IA-41 prepares a summary of the agreement and a memorandum on behalf of IA-1. The summary and memorandum are sent to the Program Office responsible for the international agreement(s). The memorandum includes the title of the international agreement, the name of the bilateral partner country, a brief description of the project activities under the agreement, the expiration date, and any actions that the Program Office must undertake to initiate the renewal process, if renewal is desired.

**STEP 2**

**Program Office decides whether to renew the international agreement(s)**



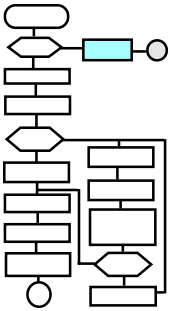
The Program Office's decision is based on any of several factors, among them the foreseeable availability of funds for continuation of activities under the international agreement, and the relevance of the proposed research to the strategic objectives of the Program Office. In making a renewal decision, Program Office staff may consult with bilateral partners informally to determine whether there is sufficient interest in the continuation of the international agreement. The Program Office should consult with IA-41 prior to discussions with the bilateral partner to determine if Circular 175 review is required.

Should the Program Office decide to renew the international agreement, the relevant Program Secretarial Officer sends a notification memorandum to IA-1 and IA-41 (Step 4). It is important to note that in the absence of notification by the Program Secretarial Officer, IA-41 will not initiate the renewal process and the agreement will expire. If the Program Office intends to renew the international agreement, it **must** complete or update an international agreement evaluation questionnaire (see copy enclosed) and submit it to IA-41.

If the Program Office decides not to renew the international agreement, IA-41 is notified (Step 3).

**STEP 3**

**Program Office notifies IA-41 of the non-renewal decision**

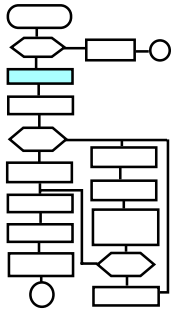


The Program Secretarial Officer sends a memorandum to IA-1 and IA-41 informing them of the non-renewal/termination decision. IA-41 then drafts a memorandum to the foreign partner, notifying them of the agreement's termination. The termination memorandum is signed by the Assistant Secretary for International Affairs, with the concur rence of the Program Secretarial Officer.

**Note:** Termination may be necessary at other times in the course of an international agreement's life span for any of a variety of reasons, such as lack of funding. In such cases, the procedure described in this step applies.

**STEP 4**

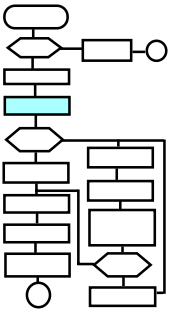
**Program Office notifies IA-41 of the renewal decision**



The Program Secretarial Officer sends a memorandum to IA-1 and IA-41 informing them of the decision to renew the international agreement, thereby initiating the renewal procedure.

**STEP 5**

**IA-41 initiates provisional renewal procedures**



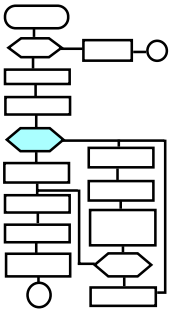
Provisional renewal procedures, include the extension of the agreements, active term for one year to allow work to continue without lapse during renegotiation. This provisional extension, for non-nuclear agreements, is obtained by IA-41 on behalf of the relevant Program Office by the preparation of a memorandum to the Department of State's Bureau of Oceans and International Environmental and Scientific Affairs, expressing DOE's intention to renew a given international agreement. If the extension relates to nuclear cooperation, the request is submitted to the State Department's Bureau of Political-Military Affairs.

Normally, agreements have a five-year active term; in filing a memorandum with the State Department, IA-41 is sometimes able to secure a one-year grace period, if necessary, that enables work under the international agreement to continue while renewal negotiations proceed.

IA-41 also sends a copy of the international agreement text (and a copy of the Department of State's approval of extension, if applicable) to the Program Office and the Office of General Counsel for review. This is done prior to the Circular 175 review.

**STEP 6**

**IA-41 and General Counsel decides if Circular 175 review is required**

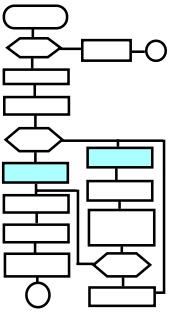


Circular 175 regulations provide that if the original agreement required a Circular 175 review, an extension or renewal will also require a Circular 175 review. If IA-41 and General Counsel decide that a Circular 175 review is not necessary, the Program Office conducts negotiations with the bilateral partner (Step 13). If the Circular 175 review is necessary, go to Step 9. In any event, whether or not a Circular 175 is required for the agreement renewal, IA-41 must forward the draft renewal for clearance to the Under Secretary prior to submittal to the Department of State for Circular 175 authority or before the Program Office conducts negotiations [Steps 7-8]

It should be noted that Circular 175 review would be required if the countries of the two parties have agreed on different intellectual property rights provisions since the signing of the original agreement.

**STEPS 7-8**

**IA-41 forwards to S-3 for review prior to conducting negotiations or seeking Circular 175 authority**

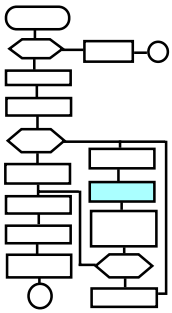


After a determination has been made by IA-41 and the General Counsel, and prior to conducting formal negotiations, or seeking Circular 175 authority, a copy of the draft agreement, along with the completed questionnaire, must be forwarded by the Assistant Secretary for International Affairs, with concur rence by the cognizant Program Secretarial Officer(s) to the Under Secretary for S-3 review.

Request for Circular 175 authority by IA-41, or formal negotiations by the Program Office cannot commence until after IA-41 has received a clearance on the proposed agreement by the Under Secretary or his/her designee.

**STEP 9**

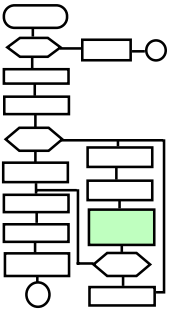
**IA-41 forwards the international agreement draft to the Department of State (if Circular 175 review is necessary)**



IA-41 prepares a memorandum requesting Circular 175 review and sends it and the international agreement to the Bureau of Oceans and International Environmental and Scientific Affairs (non-nuclear) or to the Bureau for Political-Military Affairs (nuclear), at the Department of State. A copy of the Circular 175 request memorandum also is sent to the General Counsel and the DOE Program Office staff member responsible for the international agreement. IA-41 serves as the liaison for communications between the Program Office and the Department of State.

**STEP 10**

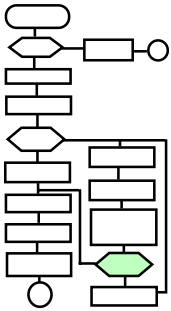
**Department of State circulates agreement for Circular 175 review**



In conducting the Circular 175 review, the Department of State consults a number of U.S. Government agencies prior to granting DOE authority to negotiate and sign an international agreement or its extension. In most cases these agencies are the Office of Science and Technology Policy, the Office of Management and Budget, the Department of Commerce, and the Office of the United States Trade Representative. In some cases, depending on the nature, sensitivity, and project scope of the agreement, additional agencies, such as the Department of Defense or the Nuclear Regulatory Commission, might also be consulted. Some of the considerations of each of the primary Circular 175 review agencies are listed in Appendix B (Circular 175 Review Process). The Circular 175 review process averages two months, though can take less time or more time depending on the urgency and/or complexity (including intellectual property rights provisions) of the agreement.

**STEP 11**

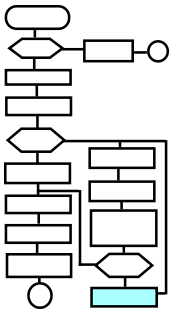
**Department of State decides whether to grant authorization to negotiate and sign the international agreement**



If the Department of State authorizes DOE to negotiate and sign the international agreement following Circular 175 review, the IA-41 desk officer notifies the Program Office of the decision. If authorization is granted, the Program Office conducts negotiations, coordinating with IA-41 and the General Counsel, with the bilateral partner (Step 13). If authorization is not granted, go to Step 12.

**STEP 12**

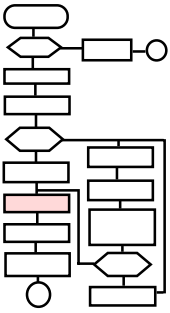
**Program Office, IA-41 and GC revise the international agreement draft, if necessary**



In cases where this authorization is not granted by the Department of State, IA-41 works with the Program Office and consults the Office of General Counsel to make, if necessary, revisions to the international agreement text in line with Circular 175 agencies' recommendations, and to re-submit it for Circular 175 review.

**STEP 13**

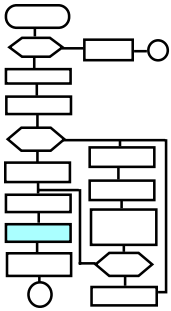
**Program Office, coordinating with IA-41 and GC, conducts negotiations with the bilateral partner**



Formal negotiations with the bilateral partner begin following the Program Office's receipt of the Department of State authorization. If, in the course of formal negotiations, further changes are made to the international agreement text, these changes might be subject to Department of State review. The Program Office must consult with IA-41 to determine what review actions are necessary under these circumstances.

**STEP 14**

## IA-41 drafts and circulates signature authority memorandum for concurrence

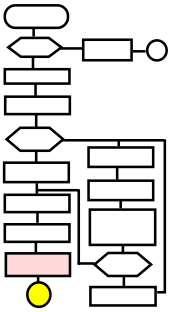


IA-41 drafts the signature authority memorandum on behalf of the Assistant Secretary for International Affairs. The memorandum is sent by IA-41 for the concurrence of the Deputy Assistant Secretary for International Energy Cooperation, the Principal Deputy Assistant Secretary for International Affairs and finally the Assistant Secretary for International Affairs. The Assistant Secretary for International Affairs then sends the memorandum to the appropriate Program Secretarial Officer granting signature authority (Step 15) and advising that one original, signed copy of the agreement extension must be returned to IA-41 by the Program Office for archiving.

**NOTE:** If the agreement extension is signed in both English and the bilateral partner's national language, an original in each language must be returned to IA-41.

**STEP 15**

**Program Secretarial Officer and the bilateral partner sign the international agreement extension**



Prior to signature, if the agreement is prepared in two languages, copies in each language of the agreement must be forwarded by IA-41 to the Department of State for language conformance review. Once conformance of the languages is completed, signature by the Program Secretarial Officer and the bilateral partner may take place. An original signed copy, in each language, must then be forwarded to IA-41 for retention in the Department's international agreements archive file.

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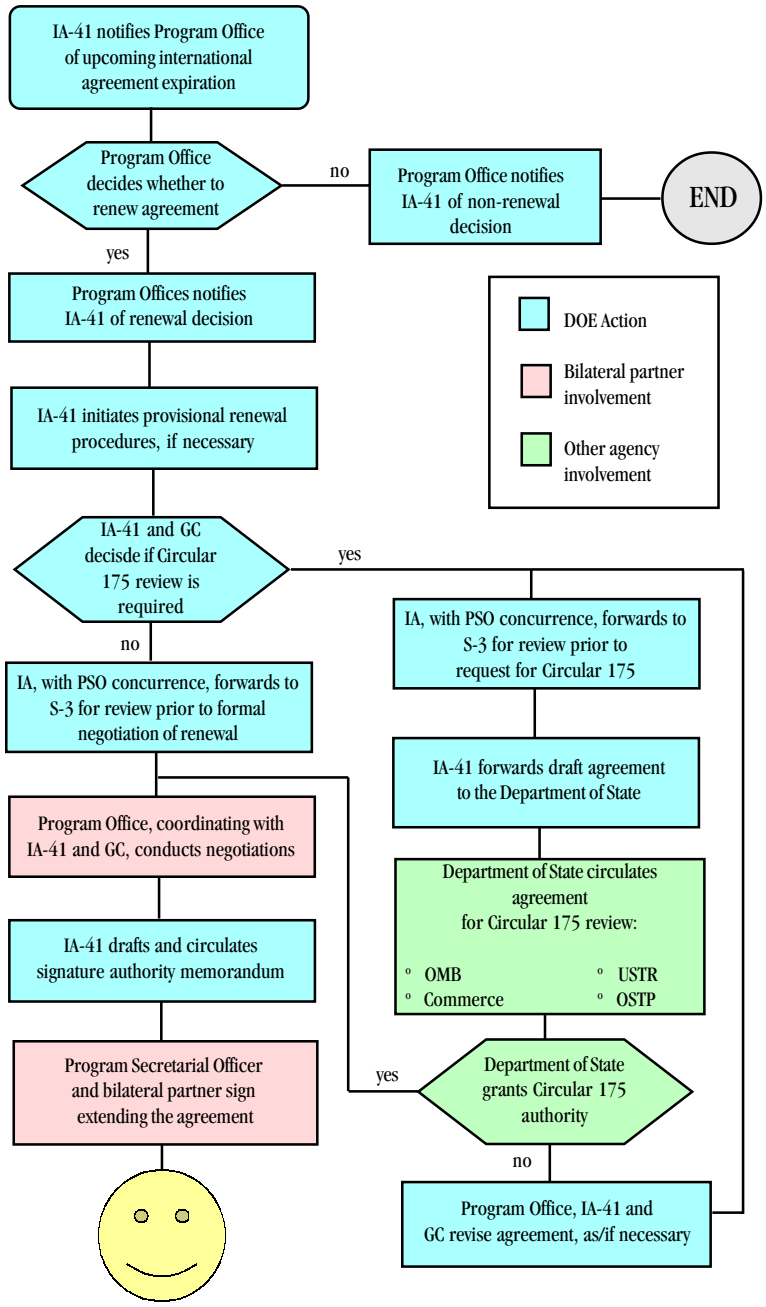
# FIGURE 2
## Flow Diagram of DOE's International Agreement Renewal Process



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# Circular 175 Issues



**The Department of State**

The Department of State's two key criteria for determining if Circular 175 Authority is necessary are:

(1) whether the agreement is binding, and

(2) whether the agreement includes the allocation of assets and/or resources of the U.S. Government. (State can be asked ahead of time if the drafting agency is uncertain whether its documents require Circular 175 approval.) All documents requiring Circular 175 review are received by State, usually through OES/SEI, and put through a series of steps.

## How the State Department Conducts a Circular 175 Review:[1, 2]

1. Drafting agency submitted proposed agreement and pertinent background information (see below) to State.

2. State circulates agreement and background memorandum to appropriate offices within State and various federal agencies for review.

3. Reviewers provide comments/clearances directly to State.

4. State forwards comments on the agreement to drafting agency.

5. Agency revises agreement, incorporating reviewers' comments into text, as appropriate.

6. Agency returns "clean" copy of agreement to State.

7. State submits final copy of proposed agreement to appropriate Assistant Secretary for Circular 175 approval.

8. State notifies agency of Circular 175 approval, and the authority to negotiate and conclude agreement.

9. Agency provides State with certified true copy of the original.

[1] If, during the negotiation of the agreement, substantive changes are made to the agreement, e.g., if the IPR annex is altered, State's legal advisors must be consulted before the agreement is signed. General principle: if parties are uncertain if changes are "substantive," better play it safe and request State's guidance.

[2] If the agreement is to be signed in two or more languages, a language comparison must be completed prior to the signing of the agreement. Two copies, one in each language, of the final, negotiated agreement should be sent to State for language conformance. Appropriate funding sites to which State can charge the service must also be provided, by the Program Office, to IA-41 for inclusion in the language conformance request to State.

## Information Needed for Circular 175 Review

For the Bureau of Oceans and International and Environmental Science Affairs to accurately represent the agreement and the intention of the drafting agency, it relies on the agency to provide the following information:

Background and History--this need only be 1 or 2 paragraphs, and should reflect the steps which have led the agency to propose the agreement. For example, was the agreement drafted after a series of visits of high-level department/ministry officials?

Benefits to the U.S.--put simply, this paragraph identifies what the U.S. stands to gain (from technical, informational, or developmental, etc., standpoint) from cooperation under the proposed agreement.

Funding--from where will the parties get funding to provide for proposed activities?

Environmental impact--will the proposed activities produce environmental effect which would need to be documented in accordance with E.O. 12114 (January 4, 1979).

Congressional consultations--will it be necessary to notify Congress of the proposed activities, or are the activities of a routine and technical nature?

The above information should be addressed when the agreement is submitted for Circular 175 review. As too often happens, the drafting agency does not provide all of this information, and a lot of time is lost while State and the agency trade phone calls in an attempt to clarify issues. This is where the Program Office's completion of the questionnaire is important.

**Time Considerations**

Above all else, be sure to submit documents for Circular 175 review well in advance of when they are to be signed. When determining possible time frames between the Circular 175 request and the actual signing, be sure to factor in:

- Circular 175 review period (usually minimum of two months)
- Time to review documents
- Circular 175 approval and notification
- Negotiation of agreement
- Language comparison

*Important Facts to Remember:*

When possible, reference active "umbrella agreements" in proposed documents stating that the proposed agreement is subject to the terms and conditions of that umbrella agreement. In most cases, umbrella agreements have fully negotiated and concluded IPR annexes. A great deal of time and effort can be saved if already negotiated elements (such as IPR language) need not be revisited.

**NOTE:** It is important that all proposed agreements first receive internal clearance and approval before requesting Circular 175 review from State.

**The Office of the U.S. Trade Representative**

The Office of the United States Trade Representative (USTR) derives its mandate for involvement in international science and technology agreements and cooperative research and development agreements (CRADAs) from three specific sources:

(1) Executive Order 12591 of 1987, which addresses the issues of intellectual property rights, reciprocity, and national security (see Appendix C and D);

(2) the Omnibus Trade and Competitiveness Act of 1988, addressing the proper protection of intellectual property and the equitable and reciprocal access of U.S. researchers to foreign research and development opportunities; and

(3) the Committee on International Science, Engineering, and Technology (CISET) Memorandum of May 1990, which further specifies guidelines regarding protection of intellectual property, and

includes the IPR Model Annex currently in use throughout the federal government (see Appendix C). The USTR is vested with responsibility for the protection of IPR in some way by each of these documents.

Pursuant to these legislative and executive mandates, USTR currently reviews agreements considering the following criteria:

*Inclusion of the IPR Model annex.*

*Equitable and reciprocal access for U.S. entities to the foreign governments R&D programs.*

*Potential impact on U.S. competitiveness.*

USTR believes there is a need to take a closer look at the U.S. Government's science and technology agreements in regard to the competitiveness issue. In accordance with current national policy, which emphasizes the close relationships among trade, technology, and competitiveness, USTR is vigilant with regard to the efforts of foreign governments to exploit U.S. technologies, whether for military or strictly industrial/commercial purposes. In this regard, USTR also seeks to ensure that DOE safeguards U.S. intellectual property in accordance with Section 2306 of the 1992 Energy Policy Act. This Section stipulates that DOE, in granting financial assistance to any foreign-owned or -controlled entity, consider whether the applicant's parent company is incorporated in a foreign country that:

1) affords national treatment to U.S.-owned companies with regard to government-supported joint ventures in energy R&D;

2) affords national treatment to U.S.-owned companies with regard to general investment opportunities; and

3) affords adequate and effective protection to intellectual property rights of U.S.-owned companies.

**IPR Annex Agreement**

The U.S. IPR Model Annex, which is currently the standard language that is included in most bilateral government-to-government science and technology agreements to which the U.S. is a party, is a topic of considerable importance, and one that merits special attention here. USTR encourages the inclusion of the U.S. IPR Model Annex in S&T umbrella agreements with foreign governments--ideally at the time of conclusion, but otherwise at the time of renewal for existing umbrellas. In cases where the U.S. IPR Model Annex is not a part of the umbrella agreement, or where no umbrella agreement exists, the U.S. Government's CISET guidelines (see Appendix C2) dictate that the inclusion of the Annex be sought in each subsidiary agreement at the time of conclusion or renewal.

DOE has modified the U.S. IPR Model Annex consistent with the CISET guidelines in order to accommodate the royalty-sharing practices of some of DOE's facilities. In particular, since some of the DOE facilities do not share royalties with inventors, this requirement has been deleted from the DOE IPR Model Annex (see Appendix C1) which has been developed for use in DOE agreements. The modifications are in the first sentence of Article I.C. and the last sentences of Articles II.B.1, and II.B.2(a) and (b). The DOE IPR Model Annex is used in all those DOE agency-to-agency agreements with countries that have agreed to or would be offered the U.S. IPR Model Annex.

A particular important element of the U.S. IPR Model Annex is Article II.B.2(b). This article includes a provision commonly known as the

"Equity Clause" which has been the subject of a great deal of attention in recent years. The Equity Clause states that in cases where intellectual property is generated collaboratively, but where only one of the parties' laws provide for the protection of that type of intellectual property, the party whose laws provide IPR protection is entitled to worldwide rights. The intent of this clause is to encourage foreign countries that currently do not have well-developed intellectual property regimes to begin to establish them. The United States has negotiated special Equity Clauses with several countries, e.g., France and Germany.

**The Office of Science and Technology Policy**

The Office of Science and Technology Policy (OSTP) coordinates, and oversees the formulation and execution of U.S. science and technology policy. OSTP co-chairs the CISET, an interagency committee that coordinates U.S. international science and technology policy. Given this mandate, OSTP participates in the Circular 175 process by reviewing international agreements for consistency with and promotion of national S&T goals.

OSTP believes that the U.S. leadership position in science and technology provides it with opportunities to promote international cooperation on issues of vital concern. Collaborative, international research serves to enhance and strengthen U.S. relations with other nations, and also allows the U.S. to leverage its S&T resources with those of other nations, particularly in addressing large-scale science that exceeds the research capacity of a single nation (e.g., AIDS, proliferation of nuclear materials, global climate change). OSTP uses the following criteria in evaluating international projects and activities yet emphasizes that, in most cases, satisfaction of a subset of these criteria provides sufficient justification for a given agreement. OSTP recognizes that each international agreement has unique

characteristics and merits and considers each one on a case-by-case basis.

### *OSTP International S&T Collaboration Criteria*

*Enhancement of domestic science and technology capacities.*

*Promotion of foreign policy objectives*

*Strengthening U.S. competitiveness or advancement of U.S. economic goals.*

*Contribution to U.S. global objectives.*

### The Office of Management and Budget

In deciding whether or not to concur on agreements undergoing Circular 175 clearance, OMB generally looks at issues including:

*Is the agreement consistent with the President's budget? Are monies included in the budget to cover the agreement? If not, does the agreement clearly state that activities under the agreement are contingent upon the availability of funds?*

*Are the activities carried out under the agreement consistent with approved Administration policy? Does the agreement allow agencies to get into areas that have otherwise been rejected?*

*What will the U.S. obtain from the agreement? Does it entail a one-way flow of information, with one of the*

*parties receiving little of useful value? How will it enhance ongoing programs?*

*What are the implications for future year spending under the agreement? Does it have a "mortgage" attached to it? If so, how will this be funded?*

OMB staff from the pertinent divisions informally discuss their views/ questions regarding the agreement, and if necessary arrange meetings with agency staff to answer questions/concerns.

### *OMB International S&T Collaboration Criteria*

*agencies list anticipated concrete activities planned to implement the agreement*

*define exactly what benefits the agency expects to receive from the agreement*

While OMB doesn't always have the information needed to evaluate agreements, agencies are good at providing information upon request.

### The Department of Commerce

The Department of Commerce seeks to maintain the nation's economic competitiveness and to protect U.S. intellectual property. In principle, the distinctions between the functions of Commerce and the USTR are fine. Thus, while each of these agencies reviews agreements for IPR implications, Commerce's review has a technical component, while USTR's is focused solely on policy.

*What, if any, effect will the agreement have on national economic competitiveness?*

*What are the technical merits and policy implications of the agreement?*

*What are the implications for IPR?*

# DOE Intellectual Property Rights Model Annex



ANNEX I

Intellectual Property Rights

Pursuant to Article _____ of this Agreement:

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant implementing arrangements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this Agreement and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated as provided in this Annex.

I. Scope

A. This Annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed by the Parties or their designees.

B. For purposes of this Agreement, "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967.

C. This Annex addresses the allocation of rights and interests between the Parties. Each Party shall ensure that the other Party can obtain the rights to intellectual property allocated in accordance with this Annex, by obtaining those rights from its own participants through contracts or other legal means, if necessary. This Annex does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by that Party's laws and practices.

D. Disputes concerning intellectual property arising under this Agreement should be resolved through discussions between the concerned participating institutions, or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.

E. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

II. Allocation of Rights

A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this Agreement. All publicly distributed copies of a copyrighted

work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.

B. Rights to all forms of intellectual property, other than those rights described in Paragraph II.A above, shall be allocated as follows:

(1) Visiting researchers, for example, scientists visiting primarily in furtherance of their education, shall receive intellectual property rights under the policies of the host institution. In addition, each visiting researcher named as an inventor or author shall be entitled to awards, bonuses, benefits, or any other rewards in accordance with the policies of the host institution.

(2) (a) For intellectual property created during joint research, for example, when the Parties, participating institutions, or participating personnel have agreed in advance on the scope of work, each Party shall be entitled to obtain all rights and interests in its own country. Rights and interests in third countries will be determined in implementing arrangements. If research is not designated as "joint research" in the relevant implementing arrangement, rights to intellectual property arising from the research will be allocated in accordance with paragraph II.B.(1) above. In addition, each person named as an inventor or author shall be entitled to awards, bonuses, benefits, or any other rewards in accordance with the policies of the participating institutions.

(b) Notwithstanding paragraph II.B.(2)(a) above, if a type of intellectual property is available under the laws of one Party but not the other Party, the Party whose laws provide for this type of protection shall be entitled to all rights and interests worldwide. Persons named as inventors or authors of the property shall nonetheless be entitled to awards, bonuses, benefits, or any other rewards in

accordance with the policies of the participating institution of the Party obtaining rights.

III. Business Confidential Information

In the event that information identified in a timely fashion as business-confidential is furnished or created under this Agreement, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practices. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.

Appendix C2

# Intellectual Property Rights Guidelines

GUIDELINES

For Using the IPR Annex

THESE GUIDELINES DESCRIBE HOW intellectual property rights in international science and technology agreements should be protected. The Annex for the Protection of Intellectual Property Rights (IPR Annex) attached to these guidelines is applicable to a wide range of cooperative activities. Modifications to the Annex are nonetheless encouraged, insofar as the modifications are consistent with the Guidelines. These modifications will be subject to interagency review. The Annex and Guidelines do not, however, limit the discretion of agencies to propose alternative arrangements for protecting and allocating rights to intellectual property.

## I. Agency Responsibilities

A technical agency wishing to engage in international cooperation shall perform the following steps before requesting interagency review:

(a) Review the intellectual property and technology transfer implications with the likely participants. The review must include at least the project managers and the offices within the agency or in the research institutions charged with monitoring intellectual property and technology transfer matters;

(b) Include the results of that review, including the names of the officials involved, in its Circular 175 request.

Agencies are encouraged to draft international agreements that authorize only the activities anticipated or planned at the time the agreements enters into force. This may be difficult, especially when the agency expects to engage in many cooperative activities, a wide range of activities, or to allow its cooperation to change during the course of an agreement.

II. When to Use the Annex

The attached IPR Annex represents the position of the United States Government on the protection and allocation of intellectual property rights in international science and technology agreements. Use of the IPR Annex, or of any alternative arrangements for the protection and allocation of intellectual property, will be reviewed in the Circular 175 process.

The considerations relevant to using the Annex will vary with the type of agreement under consideration--government-to-government, agency-to-agency, or project-level. This section of the Guidelines describes some factors that should guide decisions with regard to the protection of intellectual property in the different types of agreements. These factors are primarily applicable for agreements with nations that provide adequate and effective protection of intellectual property. It may be necessary to secure protection for

intellectual property in addition to that set out in the attached IPR Annex when cooperation is proposed with nations that lack adequate protection, especially when those nations have expressed opposition to protection of some or all types of intellectual property.

A. Government-to-Government Agreements

When an agreement will be entered into by the United States Government and another government, the attached IPR Annex should be proposed. Each government-to-government agreement is an umbrella under which agencies may undertake cooperative activities; the agreement itself need not specify the types of cooperation that will be undertaken. In this context, the substance of the IPR Annex is straightforward. The governments agree to protect intellectual property created or furnished under the Agreement. Further, they agree to follow the provisions of the Annex that set forth rules and procedures for allocating rights to intellectual property created in the course of activities under the Agreement. The simplicity of the Annex's allocation provisions make them broadly applicable and thus generally suitable for all cooperative activities undertaken pursuant to the umbrella agreement. They may not be appropriate for all types of cooperation begun under an umbrella, however. Consequently, Article I(A) of the Annex allows agencies to develop arrangements for protecting and allocating intellectual property rights that are tailored to the intellectual property issues raised by their activities. In deciding whether to deviate from the attached IPR Annex, agencies should take into account the considerations discussed in the Guidelines.

B. Agency-to-Agency Agreement

Many agencies of the U.S. Government are authorized by statute to enter into cooperative science and technology agreements with

their counterparts in foreign governments. This section explains how agencies can ensure that their agreements adequately protect and allocate rights to intellectual property. These guidelines apply to agency-level agreements whether they encompass a broad range of cooperative activities or are limited to cooperative activity specified in the agreement itself. The latter agreements are often referred to as "project agreements."

1. Agency-Level Agreements Pursuant to a Government-to-Government Agreement

Often, agency-level agreements are made pursuant to a government-to-government umbrella agreement. In that case, an agency need not include a separate IPR Annex in their agreements as long as the agency's agreement allows intellectual property to be protected and allocated in accordance with the Annex to the umbrella agreement. Where appropriate, however, agencies should develop protections tailored to their cooperative activities. These guidelines discuss considerations that agencies should take into account when altering the attached IPR Annex or developing alternative arrangements.

2. Agency-Level Agreements Not Pursuant to a Government-to-Government Agreement

Agencies may enter into agreements with agencies of governments that have not entered into umbrella agreements with the United States. Also, agencies may place their agreements outside an umbrella when one exists. (This option may be taken only after appropriate interagency review.) Agency-level agreements not pursuant to a government-to-government agreement must follow one of the following options:

(i) Propose the attached IPR Annex; or

(ii) Propose substitute or alternative protection and/or allocation in a modified IPR Annex or in the agreement, for example, in accordance with these guidelines.

III. Applicability of Provisions Protecting and Allocating Intellectual Property

Agencies may argue that no provisions specifically addressing intellectual property rights are necessary for a particular cooperative activity, either because there is no significant potential that intellectual property will be created or furnished under an agreement, or because the national interest of the United States militates in favor of cooperation in specified areas and concerns for the proper protection of intellectual property are satisfied. The contention that specific provisions are not necessary will be evaluated in interagency review on the basis of the following factors:

(a) The outcome of the agency's review of intellectual property and technology transfer implications;

(b) The nature of the activities proposed. For example, collection of environmental and earth science data, exchange of information and data available in the public domain, and training of technicians for maintenance of low technology equipment are not expected to give rise to intellectual property concerns;

(c) Whether anticipated activities could be designed to avoid technology transfer and intellectual property issues, for example, by processing data in the United States to avoid sending software abroad, by using software indigenous to the other country, or by

including provisions that preclude the exchange of intellectual property or permit such exchange only with proper protections, for example, a license or contract limiting use of the property to the specific objectives of the agreement;

(d) Whether the proposed agreement authorizes activities beyond those anticipated at the time the agreement is proposed;

(e) Whether the foreign government(s) involved will continue to work toward protection of intellectual property and inclusion of protection of the agreement;

(f) Whether the proposed cooperation has the potential to affect U.S. commercial competitiveness adversely;

(g) Whether cooperation will be consistent with efforts in other fora, for example, the Special 301 process, to persuade the foreign government(s) to improve protection of intellectual property rights;

(h) Whether the proposed cooperation has significant potential to benefit United States scientific, economic, political, or defense interests.

IV. Section-by-Section Considerations

Preamble

There has been little difficulty in reaching agreement on the general statement of obligation preceding Article I, except when the national laws of the other party have not provided for adequate and effective protection of intellectual property. Agencies may add language to the second sentence requiring a party to delay publication for up to six months upon request of the other party.

Article 1

There has been little difficulty reaching agreement on the five subsections in Article I. An agency anticipating that cooperative activities may involve types of intellectual property for which protection is unclear may wish to list it specifically in Article I.B.

Article I.C. applies when the laws of the other country grant rights to participants or to a nongovernmental entity, but not to the government itself. Article I.C. ensures that neither party will be obligated to strip its participants of rights accorded them by national law. Each party must nonetheless obtain the rights necessary to fulfill its obligations under the agreement. Most often, each party can do this by entering into contracts with its participants. An explanation of Article I.C. along these lines has proven satisfactory in several negotiations and should prevent agencies from having to alter it.

Article II.B.(1)

Under this section, the policy of the host institution determines the disposition of intellectual property rights.

The section allocates rights arising from the work of visiting researchers. It is intended to apply, for example, in the common situation of a scientist on a postdoctoral fellowship. That example is not intended to be limiting, however. The central idea is that much cooperative activity will involve scientists whose work fits into activities ongoing at the host institution, in which that institution has made a substantial investment. It is equitable that the host institution's policies control with respect to intellectual property arising from such activities. The distinction between joint research and visiting researchers is discussed further in the section concerning Article II.B.(2)(a), below.

Rights to intellectual property will be allocated in accordance with this section, unless the relevant implementing arrangement designates the activity as "joint research." This rule applies even if the cooperative activity does not obviously fall within the category of visiting research.

The section as written entitles visiting researchers to royalties. Agreement to this language by other countries may benefit United States scientists. Federal laboratories in the United States are required by law to pay royalties to visiting scientists who are named as inventors, when the inventors have assigned their rights to the U.S. Government and the Government receives royalties from licensing the invention. Many university laboratories and private contractors pay royalties to visiting researchers as a matter of policy. Some non-governmental laboratories in the United States may not pay royalties, however. Therefore, a U.S. agency should ensure that its participating institutions in fact have policies of paying royalties before it proposes the language in the attached IPR Annex.

If either the U.S. agency or the foreign agency cannot assure that its participating institutions will pay royalties, agencies should substitute the following language for the second sentence of Article II.B.1:

> In addition, each visiting researcher named as an inventor shall be entitled to national treatment with regard to awards, bonuses, benefits, or any other rewards, in accordance with the policies of the host institution and should be entitled to royalties.

If the foreign agency will not agree to the hortatory language with regard to royalties, or if the U.S. agency cannot ensure that its participating institutions will pay royalties, the U.S. agency may delete the reference to royalties. The language concerning awards,

bonuses, benefits, and other rewards should remain, however. It does not obligate parties or institutions to pay rewards, etc., if the participating institutions do not already so it; it requires only that visiting researchers receive national treatment with regard to rewards, etc., already offered. Consequently, this language should prove to be acceptable to other countries.

Language entitling participants to royalties appears four times in the IPR Annex, in Article I.C., in Article II.B.1, and in both paragraphs of Article II.B.2. If changes are made in the language of Article II.B.1, agencies should take care that the language proposed in the latter paragraphs conforms to the altered language of II.B.1.

The phrase "national treatment" is a term of art in the field of intellectual property law. It establishes a principle of nondiscrimination between visiting foreign participants and nationals of the host country with regard to intellectual property rights. The United States has long subscribed to this principle. It is reflected in the provisions of the Federal Technology Transfer Act, which extend rights to royalties to "guest workers" (which are labeled "visiting researchers" in the Annex. The United States and participating scientists may receive significant benefits if this principle is followed by nations with which the United States cooperates. Agencies should ensure that their participating institutions adhere to this principle.

Article II.B.(2)

The line between "visiting researchers" and "joint research," although commonsensical, is difficult to draw with precision. Essentially, when a scientist visits a laboratory in another country with the expectation of being made a member of a team engaged in work planned primarily by the host institution, that scientist is a visiting researcher. When the institutions, participants, or agencies of the two

countries negotiate to shape the nature and scope of the research, conversely, the cooperative activity is "joint research." The example used in the text is, accordingly, joint research with an "agreed scope of work." Not surprisingly, "joint research" often involves prestigious scientists or other workers with credentials greater than those of visiting researchers. The distinction is made even less clear by the fact that "joint research" projects may include "visiting scientists." To avoid difficulties with defining the terms, the IPR Annex provides that the agencies must designate what is "joint research." Rights to intellectual property arising from cooperation that is not so designated will be allocated in accordance with the provisions for visiting researchers.

Article II.B.2.(a) allocates rights to each party in its own "territory." In proposing the attached IPR Annex to European nations, agencies should substitute "country" for "territory." Several European nations have argued that economic integration in Europe expands their home markets to include all member states of the European Union (EU), as well as some neighboring states. By using the word "country" agencies reinforce the U.S. position that the home market is limited by national boundaries.

Article II.B.2.(b) is essentially the same equity clause used in previous agreements. Inclusion of this clause is essential in all agreements with countries that do not provide adequate and effective protection for intellectual property rights, especially if it is agreed in the interagency process that the proposed cooperative activities include types of intellectual property that are not adequately and effectively protected. For countries that do provide adequate and effective protection, it is useful to seek its inclusion in the agreement in order to protect all current and future innovations and to set a

precedent for use of the clause with other countries. The determination that a country provides adequate and effective protection will be made by the appropriate agencies of the U.S. Government.

There is one significant change in the equity clause. It includes a provision entitling inventors and authors to a share of royalties. As explained in the comments above concerning Article II.B.1, federally-funded research institutions are required to pay those persons royalties under U.S. law, and many private research institutions pay royalties as a matter of policy.

## CONCLUSION

No generally applicable system of ownership for intellectual property will be appropriate for every type of cooperative activity. Agencies are therefore encouraged to develop substitute or alternative provisions, in a modified annex or elsewhere in the agreement, that are better suited to the cooperative activities they anticipate, including, for example, structuring the cooperative activities to limit the exchange of information or personnel that might give rise to intellectual property to the specific objectives of the agreement or to avoid such exchanges altogether. Any such alternative should be based upon consideration of at least the following factors, in addition to the relevant factors described above:

(i) a conclusion, concurred in by the appropriate offices responsible for technology transfer and intellectual property rights, that the commercial exploitation of intellectual property arising from cooperative activities will be appropriately enhanced by the proposed alternative allocation; and

(ii) the allocation equitably reflects the contributions of the parties.

All agencies agree that there will be a presumption in favor of alternative arrangements concerning intellectual property that meet these conditions.

## Intellectual Property Rights Annex

ANNEX I

Intellectual Property Rights

Pursuant to Article _____ of this Agreement:

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Agreement and relevant implementing arrangements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this Agreement and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated as provided in this Annex.

I. Scope

A. This Annex is applicable to all cooperative activities undertaken pursuant to this Agreement, except as otherwise specifically agreed by the Parties or their designees.

B. For purposes of this Agreement, "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967.

C. This Annex addresses the allocation of rights, interests, and royalties between the Parties. Each Party shall ensure that the other Party can obtain the rights to intellectual property allocated in accordance with this Annex, by obtaining those rights from its own participants through contracts or other legal means, if necessary.

This Annex does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by that Party's laws and practices.

D. Disputes concerning intellectual property arising under this Agreement should be resolved through discussions between the concerned participating institutions, or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of UNCITRAL shall govern.

E. Termination or expiration of this Agreement shall not affect rights or obligations under this Annex.

II. Allocation of Rights

A. Each Party shall be entitled to a non-exclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this Agreement. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.

B. Rights to all forms of intellectual property, other than those rights described in Paragraph II.A above, shall be allocated as follows:

(1) Visiting researchers, for example, scientists visiting primarily in furtherance of their education, shall receive intellectual property rights under the policies of the host institution. In addition,

each visiting researcher named as an inventor shall be entitled to share in a portion of any royalties earned by the host institution from the licensing of such intellectual property.

(2) (a) For intellectual property created during joint research, for example, when the Parties, participating institutions, or participating personnel have agreed in advance on the scope of work, each Party shall be entitled to obtain all rights and interests in its own country. Rights and interests in third countries will be determined in implementing arrangements. If research is not designated as "joint research" in the relevant implementing arrangement, rights to intellectual property arising from the research will be allocated in accordance with paragraph II.B.(1) above. In addition, each person named as an inventor shall be entitled to share in a portion of any royalties earned by either institution from the licensing of the property.

(b) Notwithstanding paragraph II.B.(2)(a) above, if a type of intellectual property is available under the laws of one Party but not the other Party, the Party whose laws provide for this type of protection shall be entitled to all rights and interests worldwide. Persons named as inventors of the property shall nonetheless be entitled royalties as provided in paragraph II.B.2(a).

III. Business Confidential Information

In the event that information identified in a timely fashion as business-confidential is furnished or created under this Agreement, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practices. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from

it or may obtain a competitive advantage over those who do not have it, the information is not generally known or publicly available from other sources, and the owner has not previously made the information available without imposing in a timely manner an obligation to keep it confidential.

Appendix D

# Sample Agreements

**Sample Department of Energy International Agreements**

THE FOLLOWING PAGES ARE SAMPLE international agreements that the Department of Energy has entered into over the past several years. One sample is a Statement of Intent (which was not submitted through the Circular 175 process), the others reflect agreements that have been through the inter-agency review process. As this chapter implies, these are sample agreements. Depending on the country and area of collaboration, what an international agreement is called can vary.

**MEMORANDUM OF UNDERSTANDING**
**BETWEEN**
**THE DEPARTMENT OF ENERGY OF THE UNITED STATES OF AMERICA**
**AND**
**THE DEPARTMENT OF NATURAL RESOURCES OF CANADA**
**ON COLLABORATION IN**
**ENERGY RESEARCH AND DEVELOPMENT**

WHEREAS

The Department of Energy of the United States of America (DOE) and the Department of Natural Resources of Canada (NRCan), formerly the Department of Energy, Mines and Resources of Canada, (hereinafter referred to as the "Participants") signed a Memorandum of Understanding on Energy Research and Development on December 4, 1986, which expired on December 4, 1996;

The Participants wish to continue increasing the effectiveness of their programs of energy research and development (hereinafter referred to as "Energy R&D") and further expand collaboration between their two countries in this area;

The Participants subscribe to the concept of joint planning of Energy R&D programs as a vital element of enhanced Energy R&D collaboration and subscribe to the early sharing of Energy R&D program plans to facilitate the equitable allocation of research tasks within joint programs or projects, and

The Participants continue to believe that initiatives such as sharing tasks, facilities, scientific and technical information, costs and human resources could result in accomplishment of their objectives more efficiently, including achieving greater results at existing levels of expenditure. The Participants further recognize that expanded early joint planning could ultimately lead to collaboration in the construction and use of major facilities for Energy R&D. In this way, the activities of one Participant would be interdependent upon the activities of the other Participant;

THEREFORE, the Participants have reached the following understanding:

**ARTICLE I**

Objective

The objective of this Memorandum of Understanding (hereinafter referred to as the "MOU") is to establish a framework for collaboration between the Participants in Energy R&D activities. Such collaboration will be on the basis of mutual benefit, equality and reciprocity.

**ARTICLE 2**

Scope

Collaboration under this MOU may include, but is not limited to, the following fields:

a) energy conservation and energy efficiency;

b) renewable energy technologies;

c) alternative transportation fuels;

d) fossil energy; and

e) environmental protection and health research relating to energy technologies

Other collaborative fields may be added by written agreement of the Participants

**ARTICLE 3**

Forms of Collaborative Activities

Collaboration in accordance with this MOU may include, but is not limited to, the following forms:

1. Exchange of information on program plans.

2. Early consultations by senior policy and program officials to permit joint program planning of Energy R&D activities

3. Exchange of scientists, engineers, and other specialists for participation in agreed research, development, analysis, design and experimental activities conducted in research centers, laboratories, engineering offices and other facilities and enterprises of each of the Participants or its contractors for agreed periods.

4. Exchange, on a current basis, of scientific and technical information, and results and methods of research and development.

5. Organization of seminars and other meetings on specific agreed topics. Such seminars will normally be held alternately in Canada and the United States for each topic

6. Joint projects in which the Participants agree to share the work and/or costs

7. Other specific forms of collaboration may be added by mutual written agreement by the Participants.

## ARTICLE 4

Implementing Arrangements

When the Participants agree to undertake a form of cooperation set forth in Article 3, the Participants will execute a written Implementing Arrangement. Each such Implementing Arrangement will include all detailed provisions for carrying out the specified forms of cooperation and will cover such matters as technical scope, intellectual property, management, total costs, cost sharing and schedule.

## ARTICLE 5

Management

1. To supervise the execution of this MOU, each Participant will designate one person to serve as Lead Coordinator. Each Lead Coordinator will appoint a Technical Coordinator for each of the technical fields or groups of related technical fields as may be necessary.

2. The Lead Coordinators will normally meet each year, alternately in Canada and the United States. At their meetings, the Lead Coordinators will evaluate the status of cooperation under this MOU. This evaluation will include a review of the past year's activities and accomplishments and of the activities planned for the coming year within each of the technical fields or groups of related technical fields listed in Article 2, an assessment of the balances of exchanges within each of the technical fields or groups of technical fields listed in Article 2, and consideration of measures required to correct any imbalances. In addition, the Lead Coordinators will consider and act on any major new proposals for collaboration. Technical Coordinators may, at the discretion of the Lead Coordinators, participate in these annual meetings.

## ARTICLE 6

Intellectual Property

The Participants negotiating each Implementing Arrangement can elect to specify the allocation of intellectual property, interests and royalties for intellectual property or they can agree that their Implementing Arrangement will be governed by the Agreement on the Allocation of Intellectual Property Rights, Interests and Royalties for Intellectual Property Created or Furnished under Certain Scientific and Technological Cooperative Research Activities effected by exchange of notes at Ottawa February 4, 1997.

**ARTICLE 7**

General Provisions

1. Collaboration under this MOU will be in accordance with the laws and the regulations of the respective Participants. All questions related to this MOU arising during its term will be settled by the Participants by mutual agreement.

2. Nothing in this MOU is intended to affect arrangements for cooperation or collaboration between the Participants or any other arrangements of the Participants in existence on the date this MOU comes into force.

**ARTICLE 8**

Funding

Except as may be otherwise agreed in writing, all costs resulting from cooperation under this MOU will be borne by the Participant that incurs the costs. It is understood that the ability of each Participant to carry out its obligations under this MOU is subject to the availability of appropriated funds.

**ARTICLE 9**

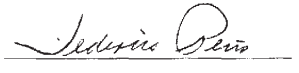
Effective Date and Termination

1. This MOU will become effective upon signature by both Participants and remain in effect for ten (10) years. This MOU may be amended or extended by mutual written agreement. This MOU may be terminated at any time by either Participant upon six (6) months written notice to the other Participant.

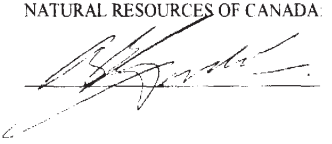
2. This MOU does not create legally binding obligations between the Participants.

Done in duplicate at Washington, D.C., this 18th day of March 1998.

FOR THE DEPARTMENT OF ENERGY OF THE UNITED STATES OF AMERICA:



FOR THE DEPARTMENT OF NATURAL RESOURCES OF CANADA:



**JOINT STATEMENT OF INTENT**
**BETWEEN**
**THE DEPARTMENT OF ENERGY**
**OF THE UNITED STATES OF AMERICA**
**AND**
**THE DEPARTMENT OF MINERAL AND ENERGY AFFAIRS**
**OF THE REPUBLIC OF SOUTH AFRICA**
**ON AN ENERGY INFORMATION EXCHANGE**

The Department of Energy of the United States of America and the Department of Mineral and Energy Affairs of the Republic of South Africa, hereafter referred to as the "Participants," intending to conduct an exchange of energy information, have reached the following understanding:

**ARTICLE I**

The Participants intend to establish a United States - South African sub-ministerial Working Group on Energy Information (hereafter referred to as the "Working Group") to facilitate and consult on the exchange of readily available energy statistics and other energy market information between the Participants.

The exchange of energy data and information will include, but not be limited to, the following:

(A) Annual energy market statistics (production, imports, exports, stocks, bunkers, transformation, demand, prices, and other data) for petroleum, natural gas, coal, electricity, fuelwood, and other forms of energy;

B) Other related data and information concerning fuel characteristics, fossil fuel heat values, refining capacity, reserves, and other energy information;

(C) Information concerning statistical methods, analytic techniques, and system documentation;

(D) Information about electronic information dissemination; and

(E) Exchange of personnel for the purpose of training on energy information collection and analysis and the facilitation of electronic communication between the Participants.

## ARTICLE II

For the purpose of promoting closer contacts and mutually beneficial consultations:

(A) The Working Group should consist of sub-ministerial officials and/or senior officials from the Participants. Participants, in consultations, may also include representatives from such other agencies as the Participants consider appropriate for the agenda of the consultations.

(B) The Energy Information Administration of the Department of Energy of the United States of America and the Chief Energy Directorate of the Department of Mineral and Energy Affairs of the Republic of South Africa jointly will coordinate cooperative activities contemplated by this Joint Statement of Intent. Each Participant will designate a Coordinator who will prepare for Working Group Meetings and who will be responsible for communications between the Participants.

## ARTICLE III

The Working Group will be guided by the following procedures:

(A) In view of the significant distance between the two countries, electronic communication will be the preferred mode of communication between the Working Group members.

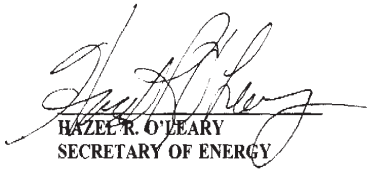
(B) Meetings of the Working Group or selected members from the Working Group may be held upon agreement of the Participants.

(C) The agendas for all meetings should be determined and agreed by the Participants. Minutes will be ratified and signed immediately after each meeting.

(D) Working Group members will be responsible for their own travel and lodging expenses. It is expected that the Participant hosting the Working Group meeting will pay the costs for arrangements associated with the meeting.

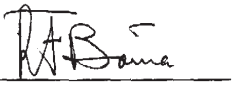
Signed, in duplicate, at Pretoria, Republic of South Africa, this 25th day of August, 1995.

**FOR THE**
**DEPARTMENT OF ENERGY**
**OF THE**
**UNITED STATES OF AMERICA:**



**HAZEL R. O'LEARY**
**SECRETARY OF ENERGY**

**FOR THE**
**DEPARTMENT OF MINERAL AND**
**ENERGY AFFAIRS OF THE**
**REPUBLIC OF SOUTH AFRICA:**



**ROELOF FREDERIK BOTHA**
**MINISTER OF MINERAL AND**
**ENERGY AFFAIRS**

# MEMORANDUM OF COOPERATION IN THE FIELD OF RESEARCH ON FUNDAMENTAL PROPERTIES OF MATTER BETWEEN THE DEPARTMENT OF ENERGY OF THE UNITED STATES OF AMERICA AND THE MINISTRY OF ATOMIC ENERGY AND THE STATE COMMITTEE FOR SCIENCE & TECHNOLOGIES OF THE RUSSIAN FEDERATION

The Department of Energy (DOE) of the United States of America (U.S.) on the one hand, and the Ministry of Atomic Energy (MINATOM) and the State Committee for Science & Technologies (GKNT) of the Russian Federation (R.F.) on the other hand, hereinafter collectively referred to as the "Parties";

Desiring to continue close and long-term cooperation in the field of research on fundamental properties of matter (FPM) established under the Memorandum of Cooperation in the Field of Research in Fundamental Properties of Matter signed by the Parties on July 5, 1991; in accordance with and in implementation of Article 2, paragraph 1 (c), and Article 4 of the agreement between the U.S. and the U.S.S.R. on Scientific and Technical Cooperation in the Field of Peaceful Uses of Atomic Energy, signed on June 1, 1990, hereinafter referred to as the "Peaceful Uses Agreement"; have agreed as follows:

## ARTICLE I

The purpose of this Memorandum, hereinafter referred to as the "MOC", is to establish an arrangement for cooperation in the field of theoretical and experimental research of fundamental properties of matter (FPM), particularly, in the field of high energy and nuclear physics, and accelerator facilities for high energy and nuclear physics research on the basis of mutual benefit, equality and full reciprocity.

## ARTICLE II

1. For the implementation of this MOC, the Joint Coordinating Committee for Research in the Fundamental Properties of Matter (JCC-FPM), established by the Joint U.S.-R.F. Committee on Cooperation in the Peaceful Uses of Atomic

Energy (hereinafter referred to as the Joint Committee), established under Article 6 of the Peaceful Uses Agreement, shall coordinate and review all aspects of the fulfillment of this MOC. It may make recommendations to the Joint Committee concerning the introduction of additions and changes to this MOC.

2. JCC-FPM shall consist of an equal number of representatives from each side. All decisions taken by the JCC-FPM shall be by agreement of the Parties.

3. The JCC-FPM shall develop and propose to the Joint Committee appropriate Implementing Annexes to this MOC within the framework of a cooperative program jointly approved by the Parties.

4. The JCC-FPM shall establish operational procedures and guidelines governing the organization and operation of the JCC-FPM, and may establish procedures for addressing and resolving operational issues arising under this MOC.

5. The JCC-FPM shall present to the Joint Committee, for its review and approval when it meets, a proposed program of cooperation to be implemented during the calendar year following the annual Joint Committee Meeting.

6. The JCC-FPM may arrange specific activities and programs to further cooperation and the development of research in the field of FPM, including exchanges of information, technical experts and equipment.

7. The JCC-FPM may assist in arranging collaboration between or among organizations, subject to respective international obligations and the national laws and regulations of the Parties.

8. The JCC-FPM shall decide on its membership and meeting schedule. Generally, it will be convened once a year unless agreed otherwise, alternately in the United States and the Russian Federation. Times and places for meeting will be agreed in advance.

## ARTICLE III

The forms of cooperation under this MOC may include the following:

1. Participation of scientists and specialists of the two parties in research and development in appropriate laboratories of the two parties.

2. Establishment of appropriate working groups for design, planning and execution of joint studies and research and development tasks.

3. Organization of seminars and workshops, and participation in national and international conferences to be held in both countries.

4. Exchanges of appropriate instrumentation, equipment, and materials to carry out projects jointly approved by the Parties.

5. Exchanges of appropriate technical information related to basic research, documentation and results of research.

6. Other forms of cooperation may be added by written agreement of the Parties, including possible collaboration (excluding construction) on new design and R&D on research facilities related to the fields covered.

**ARTICLE IV**

1. Whenever a personnel exchange is contemplated under this MOC, each Party shall ensure the selection of scientific/technical staff with the skills and competence necessary to conduct agreed-upon joint activities.

2. Each such exchange may be the subject of a separate exchange arrangement between the participating institutions.

3. Each Party shall be responsible for the salaries of its staff, and for travel to and from the receiving country as part of an approved program of exchange. Living expenses, allowances and insurance also shall be paid by the sending Party unless otherwise agreed in writing in advance of the exchange.

4. The host establishment shall arrange for appropriate accommodations for staff of the sending party, and their families, on a mutually agreeable, reciprocal basis.

5. Each Party shall provide all necessary assistance to the assigned staff (and their families) as regards administrative formalities, such as travel arrangements and visa services.

6. The attached staff of each Party shall conform to the general and special rules of work and safety regulations in force at the host establishment, or as agreed in a separate personnel exchange agreement.

**ARTICLE V**

Each Party agrees that, unless otherwise agreed in writing, in the event equipment is to be exchanged or supplied by one Party to the other Party, the following provisions shall apply covering the shipment and use of the equipment.

1. The sending Party shall supply a detailed list of the equipment to be provided together with the necessary specifications and technical documentation for operation and maintenance of the equipment.

2. The equipment, spare parts, and documentation shall be supplied by the sending Party subject to its laws, including the provisions concerning export-supplied items, and shall remain the property of the sending Party and shall be returned to the sending Party upon completion of the agreed-upon activity unless otherwise agreed.

3. The host establishment shall provide the necessary premises and shelter for equipment of the sending Party necessary to an exchange program. Utilities such as electric power, water, and gas, shall be supplied as separately agreed by the participating institutions in advance of the exchange program.

4. Responsibility for expenses, safekeeping and insurance during the transport of the equipment from the original location in the country of the sending Party to the point of entry in the country of the receiving Party shall rest with the sending Party. If the sending Party elects to have the equipment returned, it shall be responsible for the expenses, safekeeping and insurance during the transport of the equipment from the original point of entry in the country of the receiving Party to the country of the sending Party.

5. Responsibility for expenses, safekeeping and insurance during the transport of the equipment from the point of entry in the country of the receiving Party to the final destination in the country of the receiving Party shall rest with the receiving Party. If the sending Party elects to have the equipment returned, the receiving Party shall be responsible for expenses, safekeeping, and insurance during the transport of the equipment from the final destination in the country of the receiving Party to the original point of entry in the country of the receiving Party.

**ARTICLE VI**

1. Cooperation under this MOC shall be conducted in accordance with the respective international obligations, national laws and regulations of the Parties, and on the basis of the fullest possible reciprocity in terms of equal access to facilities, information and personnel on both sides.

2. Any questions of interpretation relating to this MOC that arise during the period it is in force shall be resolved by agreement of the Parties.

3. Compensation for damages incurred during implementation of this MOC shall be made to the extent permitted by the laws in force of the countries of the Parties.

4. Except when otherwise mutually agreed in writing, all costs resulting from cooperation under this MOC shall be borne by the Party that incurs them. The Parties shall carry out their obligations under this MOC subject to the availability of appropriated funds.

**ARTICLE VII**

Provisions for the protection and allocation of intellectual property set forth in the Annex to the Peaceful Uses Agreement are hereby incorporated by reference in this MOC and shall apply to all activities carried out under this MOC.

**ARTICLE VIII**

1. This MOC shall enter into force upon signature, shall remain in force for five years, and may be extended for additional five-year terms by written agreement of the Parties following joint review of the implementation of this MOC at the end of each five-year period.

2. Either Party may terminate this MOC on six months' written notice.

3. All joint activities and experiments being conducted when the effective period of this MOC ends may, upon the agreement of the Parties, be continued to their conclusion in accordance with the terms of this MOC.

4. This MOC replaces the MOC signed on July 5, 1991, which shall terminate on the date this MOC enters into force, and all forms of cooperation initiated under the MOC of July 5, 1991, and ongoing on the date this MOC enters into force shall be continued hereunder.

DONE at Washington, D.C., this seventh day of February, 1997, in duplicate in the English and Russian Languages, both texts being equally authentic.

| For the Department of Energy of the United States of America: | For the Ministry of Atomic Energy of the Russian Federation: | For the State Committee of the Russian Federation for Science and Technologies: |
|---|---|---|

## DOE AUTHORITIES TO ENGAGE IN INTERNATIONAL NEGOTIATIONS AND TO CONCLUDE INTERNATIONAL AGREEMENTS

º Section 102(10) of the Department of Energy Organization Act provides that one of the purposes of the Act is to:

> establish and implement through the Department, in coordination with the Secretaries of State, Treasury, and Defense, policies regarding international energy issues that have a direct impact on research, development, utilization, supply, and conservation of energy in the United States, and to undertake activities involving the integration of domestic and foreign policy relating to energy, including the provision of independent technical advice to the President on international negotiations involving energy resources, energy technologies, or nuclear weapons issues, except that the

Secretary of State shall continue to exercise primary author ity for the conduct of foreign policy relating to energy and nuclear proliferation, pursuant to policy guidelines established by the President. 42 U.S.C. 7112(l 0)

º Section 107(a) of the Energy Reorganization Act of 1974 authorizes DOE to "make arrangements (including contracts, agreements, and loans) for the conduct of research and development activities with private or public institutions or persons, including participation in joint or cooperative projects of a research, developmental or experimental nature." 42 U.S.C. 5817(a)

º Section 103(9) of the Energy Reorganization Act of 1974 authorizes the Administrator to encourage and participate "in international cooperation in energy and related environmental research and development," 42 U.S.C. 5813(10).

**REQUIREMENTS OF SECTION 112b OF THE CASE-ZABLOCKI ACT, 1 U.S.C. 112b**

º Secretary of State must send to the Congress the text of any international agreement, other than a treaty, to which the U.S. is a party as soon as practicable after such agreement has entered into force with respect to the U.S., but in any event no later than sixty days thereafter. If such an agreement involves matters of national security, the agreement is required to be transmitted to House and Senate Foreign Relations Committees rather than the Congress as a whole, under an appropriate injunction of secrecy to be removed only upon due notice from the President. (section 112b(a))

º Any department or agency of the U.S. Government which enters into an international agreement on behalf of the United States must send the text of the agreement to the State Department not later than twenty days after such agreement has been signed. (section 112b(b))

º Notwithstanding any other provision of law, an international agreement may not be signed or otherwise concluded on behalf of the U.S. without prior consultation with the Secretary of State. Such consultation may encompass a class of agreements rather than a particular agreement. (section 112b(c))

º The Secretary of State has authority to define "international agreement." (section 112b(d))

º Authority to issue implementing regulations is vested in the Secretary of State. (section 112b(e))

**RESPONSIBILITIES OF THE SECRETARY OF STATE UNDER 22 U.S.C. 2656d**

º Section 2656d vests in the Secretary of State primary responsibility for coordination and oversight with respect to all major science or science and technology agreements and activities between the U.S. and foreign countries, international organizations, or commissions of which the U.S. and one or more foreign countries are members. 22 U.S.C. 2656d(a)(1)

º In coordinating and overseeing such agreements and activities, the Secretary is required to consider (A) scientific merit; (B) equity of access by U.S. public and private entities to public (and publicly supported private) research and development opportunities and facilities in each country; (C) possible commercial or trade

linkages with the U.S. which may flow from the agreement or activity; (D) national security concerns; and (E) any other factors deemed appropriate. 22 U.S.C. 2656d(a)(2)

º Prior to entering into negotiations on such agreements or activities, the Secretary must provide Federal agencies which have primary responsibility for, or substantial interest in, the subject matter of the agreement or activity an opportunity to review the proposed agreement or activity to ensure its consistency with Federal technology management policies, national security and U.S. trade policies and Executive Orders, and to ensure effective interagency coordination. 22 U.S.C. 2656(a)(3)

**SUMMARY OF STATE DEPARTMENT REGULATIONS IMPLEMENTING CASE-ZABLOCKI ACT (22 CFR PART 181)**

§ 181.1. Purpose and application.

º Purpose is to implement provisions of section 112b of the Case-Zablocki Act on reporting to Congress and coordination with Secretary of State of international agreements.

§ 181.2. Criteria.

º State Department Legal Adviser will consider the following criteria in determining whether an undertaking constitutes an international agreement:

- identity and intention of parties
- significance of arrangement
- specificity, including objective criteria for determining enforceability
- necessity for two or more parties
- form

º implementing agreements may be international agreements if they satisfy above criteria; however, if terms of the implementing agreement are closely anticipated and identified in underlying the agreement, only the underlying agreement is considered an international agreement.

º extensions and modifications of international agreements are international agreements subject to the regulations.

§ 181.3. Determinations.

º Agencies are required to transmit text of any arrangement which might constitute an international agreement to the State Assistant Legal Adviser for Treaty Affairs for determination whether the arrangement is in fact an international agreement. Transmittal is to be made prior to or simultaneously with request for consultation with State.

§ 181.4. Consultations with Secretary of State.

º Secretary of State gives approval for proposed agreements negotiated pursuant to his authorization and opinion on proposed agreements negotiated by agencies which have separate authority. Approval or opinion given pursuant to Circular 175 procedure.

º State approval or opinion normally will be given within 20 days of receipt of request for consultation.

º Agencies wishing to conclude international agreements must transmit draft text or summary of the proposed agreement to State before negotiations are undertaken or, if that is not possible, as early as possible in the negotiation process; but no later than 50 days before anticipated date for concluding proposed agreement.

º Consultation requirement for particular agreement is deemed satisfied if State has been consulted in interagency committee established for purpose of approving such agreements.

§ 181.5. Twenty-day rule for concluded agreements.

º Any agency that concludes an international agreement must transmit the text of the agreement to State's Assistant Legal Adviser for Treaty Affairs no later than 20 days after the agreement has been signed.

§ 181.6. Documentation and certification.

º Transmittals to State of concluded agreements must include signed or initialed original texts, together with all accompanying papers, such as agreed minutes, exchange of notes, or side letters.

º When exchange of diplomatic notes between U.S. and a foreign government constitutes an agreement, or has effect of extending or modifying, or terminating an agreement, certified copy of the notes must be transmitted to State.

§ 181.7. Transmittal to Congress.

º State's Assistant Legal Adviser for Treaty Affairs required to transmit to Congress international agreements other than treaties.

**STATE DEPARTMENT REGULATIONS IMPLEMENTING CASE-ZABLOCKI ACT: 22 CFR Part 181**

Section 181.1. Purpose and application.

º purpose is to implement provisions of I U.S.C. 112b (Case-Zablocki Act) on reporting to Congress and coordination with Secretary of State regarding international agreements.

º regulations apply to all Federal agencies whose responsibilities include negotiation and conclusion of international agreements.

º every agency of the Federal Government is required to comply with the regulations.

Section 181.2. Criteria. [What constitutes an international agreement]

º General: the following criteria are to be applied in determining whether an undertaking, oral agreement, document or set of documents, including an exchange of notes or of correspondence, constitutes an international agreement within the meaning of the Case-Zablocki Act. With the exception of "form," each of the criteria must be met. Determinations as to whether an arrangement constitutes an international agreement within the meaning of the Case-Zablocki Act are to be made by the Legal Adviser of the Department of State under section 19 1.3 of the regulations.

-- identity and intention of the parties:

- a party to an international agreement must be a state, a state agency, or an intergovernmental organization.

- parties must intend their undertaking to be legally binding and not merely of political or personal effect; documents intended to have political or moral weight, but not intended to be legally binding, are not international agreements (e.g. the State

Department concluded that the DOE/EC Study on Social Costs of Fuel Cycles was not a legally binding arrangement, ostensibly because the document did not reflect an intention to impose legally binding obligations, the undertaking did not involve a substantial commitment of funds or continuing and/or significant cooperation, and the undertaking was lacking in political significance).

- parties must intend their undertaking to be governed by international law (i.e. arrangements intended to be governed solely by the law of one of the parties is not an international agreement, e.g., a foreign military sales loan agreement governed in its entirety by U.S. law is not an international agreement.)

-- significance of the arrangement:

- minor or trivial undertakings, even if couched in legal language and form, do not constitute international agreements. Entire context of the transaction and the expectations and intent of the parties must be taken into account in determining significance. Frequently it's a matter of degree--a promise to sell one map to a foreign nation is not an international agreement. But a commitment to exchange all maps of a particular region to be produced over a period of years may be an international agreement. Examples of arrangements that constitute international agreements are ones that:

- are of political significance
- involve substantial grants of funds of loans by the U.S. or credits payable by the U.S.
- constitute a substantial commitment of funds that extends beyond a fiscal year or would be a basis for requesting new appropriations

º involve continuing and/or substantial cooperation in the conduct of a particular program or activity, such as scientific, technical, or other cooperation, including the exchange or receipt of information and its treatment, or the pooling of data. However, individual research grants do not ordinarily constitute international agreements.

-- specificity, including objective criteria for determining enforceability:

- undertakings couched in vague or very general terms containing no objective criteria for determining enforceability or performance are not normally international agreements. Most frequently such terms reflect an intent not to be bound, e.g., a promise to "help develop a more viable world economic system" lacks the specificity essential to constitute a legally binding international agreement.

-- necessity for two or more parties:

- unilateral commitments normally do not constitute international agreements, e.g. a promise by Country A to send money to Country B to aid earthquake victims would not be an international agreement.

-- form:

- although form is not dispositive, failure to use customary form may constitute evidence of a lack of intent to be legally bound by an arrangement.

º Agency-level agreements:

-- agency-level agreements are international agreements within the meaning of the Case-Zablocki Act if they satisfy the criteria set out above.

º Implementing agreements.

-- if it satisfies the criteria set out above, an implementing agreement may be an international agreement, depending on how precisely it is anticipated and identified in the underlying agreement it is intended to implement:

- if the terms of the implementing agreement are closely anticipated and identified in the underlying agreement, only the underlying agreement is considered an international agreement.

- but if the underlying agreement is general in nature, and the implementing agreement meets the specified criteria above, the implementing agreement might well be an international agreement. For example, if the underlying agreement calls for the conclusion of "agreements for energy R & D" but without further specificity, then a particular energy R & D agreement subsequently concluded in "implementation" of that agreement, provided it meets the criteria above, could constitute an international agreement independent of the underlying agreement.

º Extensions and modifications of agreements.

-- if an undertaking constitutes an international agreement within the meaning of the Case-Zablocki Act, then a subsequent extension or modification of such an agreement would itself constitute an international agreement.

º Oral agreements.

-- an oral arrangement that meets the criteria above is an international agreement and must be reduced to writing by the agency that concluded the oral arrangement.

Section 181.3. Determinations.

º The Legal Adviser of the Department of State will determine whether a particular undertaking, document, or set of documents constitutes an international agreement.

-- Agencies whose responsibilities include negotiation and conclusion of international agreements are responsible for transmitting to the Assistant Legal Adviser for Treaty Affairs (ALA/TA) the texts of any documents which might constitute an international agreement, so that the ALA/TA may determine whether there is in fact an international agreement. The transmittal should be made prior to or simultaneously with the request for consultations with the Secretary of State.

Section 181.4. Consultations with the Secretary of State.

º The Secretary of State is responsible for ensuring that all proposed international agreements are fully consistent with U.S. foreign policy objectives. With the exception of agencies whose responsibilities include the negotiation and conclusion of large numbers of agency-level and implementing arrangements at overseas posts, all agencies must consult with the Secretary of State prior to concluding an international agreement.

º The Secretary of State gives his approval for any proposed agreement negotiated pursuant to his authorization, and his opinion on any proposed agreement negotiated by any agency, such as DOE, which has separate authority to negotiate such agreement.

-- the approval or opinion of the Secretary of State or his designee with respect to any proposed international agreement will be given pursuant to Department of State procedures set out in Volume 11, Foreign Affairs Manual, chapter 700 -- the Circular 175 procedure.

-- State Department staff are responsible for the preparation of all documents required by the Circular 175 procedure.

-- pursuant to the Circular 175 procedure, the approval of, or an opinion on a proposed international agreement to be concluded in the name of the U.S. Government will be given either by the Secretary of State or his designee. For international agreements to be concluded in the name of a particular agency, State approval or opinion will be given by the interested assistant secretary or secretaries of State, or their designees, unless such official(s) determine that consultation with the Secretary, Deputy Secretary, or an Under Secretary is necessary.

-- State approval or opinion will normally be given within 20 days of receipt of the request for consultation and of the supporting information, described below.

º Any agency wishing to conclude an international agreement should transmit to the State Department for consultation:

-- draft text or summary of the proposed agreement.

-- a precise citation of the Constitutional, statutory, or treaty authority for such agreement.

-- if the proposed agreement embodies a commitment to furnish funds, goods, or services that are beyond or in addition to those authorized in an approved budget, the agency must state what arrangements have been planned or carried out concerning consultation with OMB for such commitment.

-- other information as requested by the State Department.

º Transmittal of this information should be made:

-- before negotiations are undertaken, or if that is not feasible,

- as early as possible in the negotiation process.

- In any event, such transmittals must be made no later than 50 days prior to the anticipated date for concluding the proposed agreement, unless unusual circumstances prevent the 50 day requirement from being met. In that case the agency should use its best efforts to effect such transmittal as early as possible prior to the anticipated date for concluding the proposed agreement.

º Consultation may encompass a specific class of agreements, rather than a particular agreement, where a series of agreements of the same general type is contemplated.

º The requirement for consultation with the Department of State is deemed to be satisfied with respect to a proposed agreement if the Secretary has been consulted in his capacity as a member of an

interagency committee or council established for the purpose of approving such agreements.

-- Department of State staff serving on any such interagency committee or council are required to provide as soon as possible to the interested offices or bureaus of the Department of State and to the Office of the Legal Adviser copies of draft texts or summaries of proposed agreements and other background information.

Section 181.5. Twenty-day rule for concluded agreements.

º Any agency, including the Department of State, that concludes an international agreement must transmit the text of the concluded agreement to the Office of the Assistant Legal Adviser for Treaty Affairs as soon as possible and in no event no later than 20 days after the agreement has been signed.

-- the 20-day rule is established by the Case-Zablocki Act and is intended to enable the State Department to meet its obligation under the Act to transmit concluded agreements to the Congress no later than 60 days after their entry into force.

-- In the case of a transmittal after the 20 day limit, the agency transmitting the document may be required to provide a statement describing the reasons for the late transmittal.

Section 181.6. Documentation and certification.

º Transmittals of concluded agreements to the Assistant Legal Adviser for Treaty Affairs pursuant to section 181.5 must include the signed or initialed original texts, together with all accompanying papers, such as agreed minutes, exchanges of notes, or side letters. Where the original texts of concluded agreements are not available,

certified copies must be transmitted in the same manner as original texts.

º When an exchange of diplomatic notes between the U.S. and a foreign government constitutes an agreement or has the effect of extending, modifying, or terminating an agreement to which the U.S. is a party, a properly certified copy of the note from the U.S. to the foreign government, and the signed original is of the note from the foreign government, is required to be transmitted to the State Department.

Section 181.7. Transmittal to Congress.

º International agreements other than treaties are required to be transmitted by the Assistant Legal Adviser for Treaty Affairs to the President of the Senate and the Speaker of the House as soon as practicable after the entry into force of such agreements, but in no event later than 60 days thereafter.

º The Assistant Legal Adviser for Treaty Affairs also is required to transmit to the Congress appropriate background information on each international agreement (i.e. explanatory material). Background statements are to be prepared by the office most closely concerned with the agreement.

**NOTE:**

1 The State Department's Circular 175 is an internal State Department document which, in an of itself, is not binding on other agencies. This requirement, however, has the effect of subjecting agencies to the Circular 175 procedures, but only to the extent that those procedures are consistent with the requirements of the Case-Zablocki Act. Thus, for example, the Circular 175 requirement, in

section 722.1, that agencies obtain State's written authorization before engaging in "exploratory discussions" with representatives of another government goes well beyond the requirement in section 112b of the Case-Zablocki Act that agencies consult with the State Department before concluding an international agreement and, consequently, is not binding on agencies with independent authority to negotiate and conclude international agreements.

## AUTHORITIES TO CONDUCT INTERNATIONAL PROGRAMS

The legal authority to negotiate and conclude international agreements derives from the President's powers under Article II of the U.S. Constitution and from the President's authority to represent the nation in foreign affairs, as exercised by the Secretary of State. Additional authority is contained in 22 U.S.C. 2656d, which states that the Secretary of State shall have primary responsibility for coordination and oversight with respect to all major science or science and technology agreements and activities between the United States for foreign countries.

Specific authority for DOE to undertake international activities is contained in the following statutes:

Department of Energy Organization Act, as amended

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| §102(10) | In coordination with Secretaries of State, Treasury and Defense, the Department may establish and implement policies regarding international energy issues that have a direct impact on research, development, utilization, supply and conservation of energy In the United States. The Department may undertake activities involving the integration of domestic and foreign policy related to energy. |

Energy Reorganization Act of 1974, as amended

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| §103(9) | The Department is responsible for encouraging and participating in energy and related environmental research and development. |

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| §107(a) | The Department is authorized to make arrangements (including contracts, agreements, and loans) for the conduct of research and development activities with private or public institutions or persons, including participation in joint or cooperative projects of a research, developmental or experimental nature, and to make payments and generally to take such steps as necessary or appropriate to perform vested functions. |

Atomic Energy Act of 1954, as amended

| | |
|---|---|
| §123 | The Department is authorized to conclude agreements with other nations and regional defense organizations in order to conduct or to permit the following activities involving special nuclear material under the following provisions of the Act: transactions (sections 53 and 103); distribution in the U.S. (section 54); production outside of the U.S. (section 57); foreign distribution (section 54); and medical therapy (section 104).<br><br>Section 123 authorizes the Deparunent to conclude such agreements in order to permit foreign distribution of byproduct material under section 82 of the Act.<br><br>Section 123 authorizes the President to authorize the Department to cooperate with, and to communicate certain restricted data to, another nation. |

Nuclear Non-Proliferation Act of 1978

§ 502 Section 502 requires the United States to initiate a cooperative program with developing countries to meet energy needs, reduce dependence on petroleum fuels and expand energy alternatives. The program involves evaluating energy alternatives, facilitating trade in energy commodities, developing energy resources and applying suitable technologies. Section 502 states that the Department of Energy, under the general policy guidance of the Department of State shall initiate an exchange program to implement this section.

Solar Energy Research, Development, and Demonstration Act of 1974

§ ll The Secretary of Energy, in furtherance of the objectives of the Act, is authorized to cooperate and participate jointly with other nations, especially those with agreements for scientific cooperation with the cooperation with the United States, in the following activities:

(1) interinstitutional, bilateral, or multilateral research projects in the field of solar energy; and

(2) agreements and programs which will facilitate the exchange of information and data relating to solar energy resource assessment and solar energy technologies.

## SUBCHAPTER S-INTERNATIONAL AGREEMENTS

## PART 181 - COORDINATION AND REPORTING OF INTERNATIONAL AGREEMENTS

Sec.



Authority: U.S C. 112b; 22 U.S.C. 2658; 22 U.S.C. 3312.

Source: 46 FR 35918, July 13, 1981, unless otherwise noted.

### § 181.1 Purpose and application.

(a) The purpose of this part is to implement the provisions of 1 U.S.C. 112b, popularly known as the Case-Zablocki Act (hereinafter referred to as the "Act"), on the reporting to Congress and coordination with the Secretary of State of international agreements of the United States. This part applies to all agencies of the U.S. Government whose responsibilities include the negotiation and conclusion of international agreements, This part does not, however, constitute a delegation by the Secretary of State of the authority to engage in such activities. Further, it does not affect any additional requirements of law governing the relationship between particular agencies and the

Secretary of State in connection with international negotiations and agreements, or any other requirements of law concerning the relationship between particular agencies and the Congress. The term "agency" as used in this part means each authority of the United States Government, whether or not it is within or subject to review by another agency.

(b) Pursuant to the key legal requirements of the Act--full and timely disclosure to the Congress of all concluded agreements and consultation by agencies with the Secretary of State with respect to proposed agreements every agency of the Government is required to comply with each of the provisions set out in this part in implementation of the Act. Nevertheless, this part is intended as a framework of measures and procedures which, it is recognized, cannot anticipate all circumstances or situations that may arise. Deviation or derogation from the provisions of this part will not affect the legal validity, under United States law or under international law, of agreements concluded, will not give rise to a cause of action, and will not affect any public or private rights established by such agreements.

**§ 181.2 Criteria.**

(a) General. The following criteria are to be applied in deciding whether any undertaking, oral agreement, document, or set of documents, including an exchange of notes or of correspondence, constitutes an international agreement within the meaning of the Act, as well as within the meaning of 1 U.S.C. 112a, requiring the publication of international agreements. Each of the criteria except those in paragraph (a)(5) of this section must be met in order for any given undertaking of the United States to constitute an international agreement.

*(1) Identity and intention of the parties. A* party to an international agreement must be a state, a state agency, or an Intergovernmental organization. The parties must intend their undertaking to be legally binding, and not merely of political or personal effect. Documents intended to have political or moral weight, but not intended to he legally binding, are not international agreements. An example of the latter is the Final Act of the Helsinki Conference on Cooperation and Security in Europe. In addition, the parties must intend their undertaking to be, governed by international law, although this intent need not be manifested by a third-party dispute settlement mechanism or any express reference to international law. In the absence of any provision in the arrangement with respect to governing law, it will be presumed to be governed by international law. This presumption may be overcome by clear evidence, in the negotiating history of the agreement or otherwise, that the parties intended the arrangement to be governed by another legal system. Arrangements governed solely by the law of the United States, or one of the states or jurisdictions thereof, or by the law of any foreign state, are not international agreements for these purposes. For example, a foreign military sales loan agreement governed in its entirety by U.S. law is not an international agreement.

(2) *Significance ol the arrangement*. Minor or trivial undertakings, even if couched in legal language and form, are not considered international agreements within the meaning of the Act or of 1 U.S.C. 112a. In deciding what level of significance must be reached before a particular arrangement becomes an international agreement, the entire context of the transaction and the expectations and intent of the parties must he taken into account. It is often a matter of degree. For example, a promise to sell one map to a foreign nation is not an international agreement; a promise to exchange all maps of a particular region to be produced over a period of years

may be an international agreement. It remains a matter of judgment based on all of the circumstances of the transaction. Determinations are made pursuant to §181.3. Examples of arrangements that may constitute international agreements are agreements that (i) are of political significance; (ii) involve substantial grants of funds or loans by the United States or credits payable to the United States; (iii) constitute a substantial commitment of funds that extends beyond a fiscal year or would be a basis for requesting new appropriations; (iv) involve continuing and/or substantial cooperation in the conduct of a particular program or activity, such as scientific, technical, or other cooperation, including the exchange or receipt of information and its treatment, or the pooling of data. However, individual research grants and contracts do not ordinarily constitute international agreements.

(3) *Specificity, including objective criteria for determining enforceability.* International agreements require precision and specificity in the language setting forth the undertakings of the parties.
Undertakings couched in vague or very general terms containing no objective criteria for determining enforceability or performance are not normally international agreements. Most frequently such terms reflect an intent not to be bound. For example, a promise to "help develop a more viable world economic system" lacks the specificity essential to constitute a legally binding international agreement. However, the intent of the parties is the key factor. Undertakings as general as those of, for example, Articles 55 and 56 of the United Nations Charter have been held to create internationally binding obligations intended as such by the parties.

(4) *Necessity for two or more parties.* While unilateral commitments, on occasion may be legally binding, they do not constitute international agreements. For example, a statement by the

President promising to send money to Country Y to assist earthquake victims would not be an international agreement. It might be an important undertaking, but not all undertakings ininternational relations are in the form of international agreements. Care should be taken to examine whether a particular undertaking is truly unilateral in nature, or is part of a larger bilateral or multilateral set of undertakings. Moreover, "consideration," as that term is used in domestic contract law, is not required for international agreements.

(5) *Form*. Form as such is not normally an important factor, but it does deserve consideration. Documents which do not follow the customary form for international agreements, as to matters such as style, final clauses, signatures, or entry into force dates, may or may not be international agreements. Failure to use the customary form may constitute evidence of a lack of intent to be legally bound by the arrangement. If, however, the general content and context reveal an intention to enter into a legally binding relationship, a departure from customary form will not preclude the arrangement from being on international agreement. Moreover, the title of the agreement will not be determinative. Decisions will be made on the basis of the substance of the arrangement, rather than on its denomination as an international agreement, a memorandum of understanding, exchange of notes, exchange of letters, technical arrangement, protocol, note verbale, aide-memoire, agreed minute, or any other name.

(b) *Agency-Level agreements.* Agency-level agreements are international agreements within the meaning of the Act and of 1 U.S.C. 112a if they satisfy the criteria discussed in paragraph (a) of this section. The fact that an agreement is concluded by and on behalf of a particular agency of the United States Government, rather than the United State Government, does not mean that the agreement is not an international agreement. Determinations are made on the basis of the substance of the agency-level agreement in question.

(c) *Implementing agreements*. An implementing agreement, if it satisfies the criteria discussed in paragraph (a) of this section, may be an international agreement, depending upon how precisely it is anticipated and identified in the underlying agreement it is designed to implement. If the terms of the implementing agreement are closely anticipated and identified in the underlying agreement, only the underlying agreement is considered an international agreement. For example the underlying agreement might call for the sale by the United States of 1000 tractors, and a subsequent implementing agreement might require a first installment on this obligation by the sale of 100 tractors of the brand X variety. In that case, the implementing agreement is sufficiently identified in the underlying agreement, and would not itself be considered an international agreement within the meaning of the Act or of 1 U.S.C. 112a. Project annexes and other documents which provide technical content for an umbrella agreement are not normally treated as international agreements. However, if the underlying agreement is general in nature, and the implementing agreement meets the specified criteria of paragraph (a) of this section, the implementing agreement might well be an international agreement. For example, if the underlying agreement calls for the conclusion of "agreements for agricultural assistance," but without further specificity, then a particular agricultural assistance agreement subsequently concluded in "implementation" of that obligation, provided it meets the criteria discussed in paragraph (a) of this section, would constitute an international agreement independent of the underlying agreement.

(d) *Extensions and modifications of agreements.* If an undertaking constitutes an international agreement within the meaning of the Act and of 1 U.S.C. 112a, then a subsequent extension or modification of such an agreement would itself constitute an international agreement within the meaning of the Act and of 1 U.S.C. 112a.

(e) *Oral Agreements.* Any oral arrangement that meets the criteria discussed in paragraphs (a)(l)-(4) of this section is an international agreement and, pursuant to section (a) of the Act, must be reduced to writing by the agency that concluded the oral arrangement. In such written form, the arrangement is subject to all the requirements of the Act and of this part. Whenever a question arises whether an oral arrangement constitutes an international agreement, the arrangement shall be reduced to writing and the decision made in accordance with §181.3.

**§ 181.3 Determinations.**

(a) Whether any undertaking, document, or set of documents constitutes or would constitute an international agreement within the meaning of the Act or of 1 U.S.C. 112a shall be determined by the Legal Adviser of the Department of State, a Deputy Legal Adviser, or in most cases the Assistant Legal Adviser for Treaty Affairs. Such determinations shall be made either on a case-by-case basis, or on periodic consultation, as appropriate.

(b) Agencies whose responsibilities include the negotiation and conclusion of international agreements are responsible for transmitting to the Assistant Legal Adviser for Treaty Affairs, for decision pursuant to Paragraph (a) of this section, the texts of any document or set of documents that might constitute an international agreement. The transmittal shall be made prior to or simultaneously with the request for consultations with the Secretary of State required by subsection (c) of the Act and § 181.4 of this part.

(c) Agencies whose responsibilities include the negotiation and conclusion of large numbers of agency-level and implementing arrangements at overseas posts, only a small number of which might

constitute international agreements within the meaning of the Act and of 1 U.S.C. 112a, are required to transmit prior to their entry into force only the texts of the more important of such arrangements for decision pursuant to paragraph (a) of this section. The texts of all arrangements that might constitute international agreements shall, however, be transmitted to the Office of the Assistant Legal Adviser for Treaty Affairs as soon as possible, and in no event to arrive at that office later than 20 days after their signing, for decision pursuant to paragraph (a) of this section.

(d) Agencies to which paragraphs (b) and (c) of this section apply shall consult periodically with the Assistant Legal Adviser for Treaty Affairs in order to determine which categories of arrangements for which they are responsible are likely to be international agreements within the meaning of the Act and of 1 U.S.C. 112a.

**§ 181.4 Consultations with the Secretary of State**.

(a) The Secretary of State is responsible, on behalf of the President, for ensuring that all proposed international agreements of the United States are fully consistent with United States foreign policy objectives. Except as provided in § 181.3(c) of this part, no agency of the U.S. Government may conclude an international agreement, whether entered into in the name of the U.S. Government or in the name of the agency, without prior consultation with the Secretary of State or his designee.

(b) The Secretary of State (or his designee) gives his approval for any proposed agreement negotiated pursuant to his authorization, and his opinion on any proposed agreement negotiated by an agency which has separate authority to negotiate such agreement. The approval or opinion of the Secretary of State or his designee with respect to any proposed international agreement will be given

pursuant to Department of State procedures set out in Volume 11, Foreign Affairs Manual, Chapter 700 (Circular 175 procedure). Officers of the Department of State shall be responsible for the preparation of all documents required by the Circular 175 procedure.

(c) Pursuant to the Circular 175 procedure, the approval of, or an opinion on a proposed international agreement to be concluded in the name of the U.S. Government will be given either by the Secretary of State or his designee. The approval of, or opinion on a proposed international agreement to be concluded in the name of a particular agency of the U.S. Government will be, given by the interested assistant secretary or secretaries of State, or their designees, unless such official(s) judge that consultation with the Secretary, Deputy Secretary, or an Under Secretary is necessary. The approval of, or opinion on a proposed international agreement will normally be given within 20 days of receipt of the request for consultation and of the information as required by § 181.4(d)-(g).

(d) Any agency wishing to conclude an international agreement shall transmit to the interested bureau or office in the Department of State, or to the Office of the Legal Adviser, for consultation pursuant to this section, a draft text or summary of the proposed agreement, a precise citation of the Constitutional, statutory, or treaty authority for such agreement, and other background information as requested by the Department of State. The transmittal of the draft text or summary and citation of legal authority shall be made before negotiations are undertaken, or if that is not feasible, as early as possible in the negotiating process. In any event such transmittals must be made no later than 50 days prior to the anticipated date for concluding the proposed agreement. If unusual circumstances prevent this 50-day requirement from being met, the concerned agency shall use its best efforts to effect such transmittal as early as possible prior to the anticipated date for concluding the proposed agreement.

(e) If a proposed agreement embodies a commitment to furnish funds, goods, or services that are beyond or in addition to those authorized in an approved budget, the agency proposing the agreement shall state what arrangements have been planned or carried out concerning consultation with the Office of Management and Budget for such commitment. The Department of State should receive confirmation that the relevant budget approved by the President provides or requests funds adequate to fulfill the proposed commitment, or that the President has made a determination to seek the required funds.

(f) Consultation may encompass a specific class of agreements rather than a particular agreement where a series of agreements of the same general type is contemplated that is, where a number of agreements are to be negotiated according to a more or less standard formula, such as, for example, Pub.L. 480 Agricultural Commodities Agreements. Any agency wishing to conclude a particular agreement within a specific class of agreements about which consultations have previously been held pursuant to this section shall transmit a draft text of the proposed agreement to the Office of the Legal Adviser as early as possible but in no event later than 20 days prior to the anticipated date for concluding the agreement.

(g) The consultation requirement shall be deemed to be satisfied with respect to proposed international agreements of the United States about which the Secretary of State (or his designee) has been consulted in his capacity as a member of an interagency committee or council established for the purpose of approving such proposed agreements. Designees of the Secretary of State serving on any such interagency committee or council are to provide as soon as possible to the interested offices or bureaus of the Department of

State and to the Office of the Legal Adviser copies of draft texts or summaries of such proposed agreements and other background information as requested.

(h) Before an agreement containing a foreign language text may be signed or otherwise concluded, a signed memorandum must be obtained from a responsible language officer of the Department of State or of the U.S. Government agency concerned certifying that the foreign language text and the English language test are in conformity with each other and that both texts have the same meaning in all substantive respects. The signed memorandum is to be made available to the Department of State upon request.

**§ 181.5 Twenty-day rule for concluded agreements.**

(a) Any agency, including the Department of State, that concludes an international agreement within the meaning of the Act and of 1 U.S.C. 112a, whether entered into in the name of the U.S. Government or in the name of the agency, must transmit the text of the concluded agreement to the Office of the Assistant Legal Adviser for Treaty Affairs as soon as possible and in no event to arrive at that office later than 20 days after the agreement has been signed. The 20-day limit, which is required by the Act, is essential for purposes of permitting the Department of State to meet its obligation under the Act to transmit concluded agreements to the Congress no later than 60 days after their entry into force.

(b) In any case of transmittal after the 20-day limit, the agency or Department of State office concerned may be asked to provide to the Assistant Legal Adviser for Treaty Affairs a statement describing the reasons for the late transmittal. Any such statement will be used, as

necessary, in the preparation of the annual report on late transmittals, to be signed by the President and transmitted to the Congress, as required by subsection (b) of the Act.

**§ 181.6 Documentation and certification.**

(a) Transmittals of concluded agreements to the Assistant Legal Adviser for Treaty Affairs pursuant to §181.5 must include the signed or initialed original texts, together with all accompanying papers, such as agreed minutes, exchanges of notes or side letters. The text transmitted must be accurate, legible, and complete, and must include the texts of all languages in which the agreement was signed or initiated. Names and identities of the individuals signing or initialing the agreements, for the foreign government as well as for the United States, must, unless clearly evident in the texts transmitted, be separately provided.

(b) Agreements from overseas posts should be transmitted to the Department of State by priority airgram, marked for the attention of the Assistant Legal Adviser for Treaty Affairs, with the following notation below the enclosure line: FAIM: Please send attached original agreement to LJT on arrival.

(c) Where the original texts of concluded agreements are not available, certified copies must be transmitted in the same manner as original texts. A certified copy must be an exact copy of the signed original.

(d) When an exchange of diplomatic notes between the United States and a foreign government constitutes an agreement or has the effect of extending, modifying, or terminating an agreement to which the United States is a party, a properly certified copy of the note from

the United States to the foreign government, and the signed original of the note from the foreign government, must be transmitted. If, in conjunction with the agreement signed, other notes related thereto are exchanged (either at the same time, beforehand, or subsequently), properly certified copies of the notes from the United States to the foreign government must be transmitted with the signed originals of the notes from the foreign government.

(e) Copies may be certified either by a certification on the document itself, or by a separate certification attached to the document. A certification on the document itself is placed at the end of the document. It indicates, either typed or stamped, that the document is a true copy of the original signed or initialed by (insert full name of signing officer), and it is signed by the certifying officer. If a certification is typed on a separate sheet of paper, it briefly describes the document certified and states that it is a true copy of the original signed by (full name) and it is signed by the certifying officer.

**§ 181.7 Transmittal to the Congress.**

(a) International agreements other than treaties shall be transmitted by the Assistant Legal Adviser for Treaty Affairs to the President of the Senate and the Speaker of the House of Representatives as soon as practicable after the entry into force of such agreements, but in no event later than 60 days thereafter.

(b) Classified agreements shall be transmitted by the Assistant Secretary of State for Congressional Relations to the Senate Committee on Foreign Relations and to the House Committee on Foreign Affairs.

(c) The Assistant Legal Adviser for Treaty Affairs shall also transmit to the President of the Senate and to the Speaker of the

House of Representatives background information to accompany each agreement reported under the Act. Background statements, while not
expressly required by the act, have been requested by the Congress and have become an integral part of the reporting requirement. Each background statement shall include information explaining the agreement, the negotiations, the effect of the agreement, and a precise citation of legal authority. At the request of the Assistant Legal Adviser for Treaty Affairs, each background statement is to be prepared in time for transmittal with the agreement it accompanies by the office most closely concerned with the agreement. Background statements for classified agreements are to be transmitted by the Assistant Secretary of State for Congressional Relations to the Senate Committee on Foreign Relations and to the House Committee on Foreign Affairs.

(d) Pursuant to section 12 of the Taiwan Relations Act (22 U.S.C. 331.1), any agreement entered into between the American Institute in Taiwan and the governing authorities on Taiwan, or any agreement entered into between the Institute and an agency of the United States Government, shall be transmitted by the Assistant Secretary of State for Congressional Relations to the President of the Senate and to the Speaker of the House of Representatives as soon as practicable after the entry into force of such agreements, but in no event later than 60 days thereafter. Classified agreements entered into by the Institute shall be transmitted by the Assistant Secretary for Congressional Relations to the Senate Committee on Foreign Affairs.

## § 2656a. Congressional declaration of findings of major significance of modern scientific and technological advances in foreign policy

The Congress finds that--

(1) the consequences of modern scientific and technological advances are of such major significance in United States foreign policy that understanding and appropriate knowledge of modern science and technology by officers and employees of the United States Government are essential in the conduct of modern diplomacy;

(2) many problems and opportunities for development in modern diplomacy lie in scientific and technological fields;

(3) in the formulation, implementation, and evaluation of the technological aspects of United States foreign policy, the United States Government should seek out and consult with both public and private industrial, academic, and research institutions concerned with modern technology; and

(4) the effective use of science and technology in international relations for the mutual benefit of all countries requires the development and use of the skills and methods of long-range planning.

(Pub. L. 95-426, Tide V, § 501, Oct. 7, 1978, 92 Stat. 982.)

## HISTORICAL AND STATUTORY NOTES

**Revision Notes and Legislative Reports** see 1978 U.S.Code Cong. and Adm.News, p. 2424

**1978 Act** House Report No. 95-1160 and House Conference Report No. 95-1535.

## CROSS REFERENCES

Assistance in carrying out functions of Institute for Scientific and Technological Cooperation, see 22 USCA § 3503.

## 2556b. Congressional declarations of policy regarding consequences of science and technology on conduct of foreign policy

In order to maximize the benefits and to minimize the adverse consequences of science and technology in the conduct of foreign policy, the Congress declares the following to be the policy of the United States:

(1) Technological opportunities, impacts, changes, and threats should be anticipated and assessed, and appropriate measures should be implemented to influence such technological developments in ways beneficial to the United States and other countries.

(2) The mutually beneficial applications of technology in bilateral and multilateral agreements and activities involving the United States and foreign countries or international organizations should be recognized and supported as an important element of United States foreign policy.

(3) The United States Government should implement appropriate measures to insure that individuals are trained in the use of science and technology as an instrument in international relations and that officers and employees of the United States Government engaged in formal and informal exchanges of scientific and technical information, personnel, and hardware are knowledgeable in international affairs.

(4) In recognition of the environmental and technological factors that change relations among countries and in recognition of the growing inter-dependence between the domestic and foreign policies

and programs of the United States, United States foreign policy should be continually reviewed by the executive and legislative branches of the Government to insure appropriate and timely application of science and technology to the conduct of United States foreign policy.

(5) Federally supported international science and technology agreements should be negotiated to ensure that--

(A) intellectual property rights are properly protected;

and

(B) access to research and development opportunities and facilities, and the flow of scientific and technological information, are, to the maximum extent practicable, equitable and reciprocal.

(Pub. L. 95-426, Title V, § 502. Oct. 7, 1978, 92 Stat. 982; Pub.L. 100-418, Title V, § 5171(a), Aug. 23. 1988, 102 Stat. 1452.)

**HISTORICAL AND STATUTORY NOTES**

**Revision Notes and Legislative Reports Amendments**

**1978 Act.** House Report No. 95-1160

**1988 Amendment.** Par. (5). Pub.L. and House Conference Report No. 100-418 added par. (5). 95-1535, see 1978 U.S. Code Cong. and Adm.News, p. 2424.

**1989 Act.** House Conference Report No. 100-576, see 1988 U.S.Code Cong. and Adm.News, p. 1547.

**CROSS REFERENCES**

Assistance in carrying out functions of the Institute for Scientific and Technological Cooperation, see 22 USCA § 3503.

## § 2656c. Responsibilities of President

### (a) Identification, evaluation and initiation of scientific and technological developments

The President, in consultation with the Director of the Office of Science and Technology Policy and other officials whom the President considers appropriate, shall--

(1) notwithstanding any other provision of law, insure that the Secretary of State is informed and consulted before any agency of the United States Government takes any major action, primarily involving science or technology, with respect to any foreign government or international organization;

(2) identify and evaluate elements of major domestic science and technology programs and activities of the United States Government with significant international implications;

(3) identify and evaluate international scientific or technological developments with significant implications for domestic programs and activities of the United States Government; and

(4) assess and initiate appropriate international scientific and technological activities which are based upon domestic scientific and technological activities of the United States Government and which are beneficial to the United States and foreign countries.

### (c) Disclosure of sensitive information

Except as otherwise provided by law, nothing in this section shall be construed as requiring the public disclosure of sensitive

**(b) Report to Congress; recommendations**

The President shall study and not later than January 31, 1980, and not later than January 31 of each year thereafter, shall transmit to the[1/] Speaker of the House of Representatives and the Committees on Foreign Relations and Governmental Affairs of the Senate a report containing information and recommendations with respect to--

(1) personnel requirements, and standards and training for service of officers and employees of the United States Government, with respect to assignments in any Federal agency which involve foreign relations and science or technology;

(2) the continuation of existing bilateral and multilateral activities and agreements primarily involving science and technology, including (A) an analysis of the foreign policy implications and the scientific and technological benefits of such activities or agreements for the United States and other parties, (B) the adequacy of the funding for and administration of such activities and agreements, and (C) plans for future evaluation of such activities and agreements on a routine basis; and

(3) equity of access by United States public and private entities to public (and publicly supported private) research and development opportuniues and facilities in each country which is a major trading partner of the United States.

[1/] **So in original.**

**(c) Disclosure of sensitive information**

Except as otherwise provided by law, nothing in this section shall be construed as requiring the public disclosure of sensitive information relating to intelligence sources or methods or to persons engaged in monitoring scientific or technological developments for intelligence purposes.

**(d) Availability to United States Trade Representative of Information and recommendations**

(1) The information and recommendations developed under subsection (b)(3) of this section shall be made available to the United States Trade Representative for use in his consultations with Federal agencies pursuant to Executive orders pertaining to the transfer of science and technology.

(2) In providing such information and recommendations, the President shall utilize information developed by any Federal departments, agencies, or interagency committees as he may consider necessary.

(Pub. L. 95-426, Title V, § 503, Oct. 7, 1978, 92 Stat. 983; Pub-L. Tide V, § 517 1 (b), (c), Aug. 23, 1988, 102 Stat. 1453.)

**HISTORICAL AND STATUTORY NOTES**

**Revision NoW and Legislative Reports** see 1978 U.S.Code Cong. and Adm,News. p. 2424

**1978 Act.** House Report No. 95-1160 and House Conference Report No. 95-1535

**1988 Act.** House Conference Report No. 100-576, see 1988 U.S.Code Cong. and Adm. News, p. 1547.

**Amendments**

**1988 Amendment.** Subsec. (b).

Pub.L. 100-418, § 5171(b)(1). substituted "the Speaker of the House of Representatives and the Committees on Foreign Relations and Government Affairs of the Senate" for "Congress" in the provisions preceding par. (1)

Pub.L 100-418, § 5171(b)(2), inserted "information and" in the provisions preceding par.(I).

Subsec. (b)(3). Pub.L. 100-418, 5171(b)(3) to (5). added par. (3).

Subsec. (d). Pub.L. 100-418, § 5171(c), added subsec. (d).

**CROSS REFERENCES**

Assistance in carrying out functions of the Institute for Scientific and Technological Cooperation, see 22 USCA § 3503.

## § 2656d. Responsibilities of Secretary of State

### (a) Coordination and oversight over science and technology agreements between United States and foreign countries, etc.

(1) In order to implement the policies set forth in section 2656b of this title, the Secretary of State (hereafter in this section referred to as the "Secretary") shall have primary responsibility for coordination and oversight with respect to all major science or science and technology agreements and activities between the United

States and foreign countries, international organizations, or commissions of which the United States and one or more foreign countries are members.

(2) In coordinating and overseeing such agreements and activities, the Secretary shall consider (A) scientific merit; (B) equity of access as described in section 2656c(b) of this title, (C) possible commercial or trade linkages with the United States which may flow from the agreement or activity; (D) national security concerns, and (E) any other factors deemed appropriate.

(3) Prior to entering into negotiations on such an agreement or activity, the Secretary shall provide Federal agencies which have primary responsibility for, or substantial interest in, the subject matter of the agreement or activity, including those agencies responsible for--

(A) Federal technology management policies set forth by Public Law 96-517 and the Stevenson-Wydler Technology Innovation Act of 1980 [15 US.C.A. § 3701 et seq.];

(B) national security policies;

(C) United States trade policies; and

(D) relevant Executive orders,

with an opportunity to review the proposed agreement or activity to ensure its consistency with such policies and Executive orders, and to ensure effective interagency coordination.

**(b) Long-term contracts, grants to obtain studies, etc., with respect to application of science and technology to foreign policy**

The Secretary shall, to such extent or in such amounts as are provided in appropriation Acts, enter into long-term contracts, including contracts for the services of consultants, and shall make grants and take other appropriate measures in order to obtain studies, analyses, and recommendations from knowledgeable persons and organizations with respect to the application of science or technology to problems of foreign policy.

**(c) Long-term and short-term contracts, grants, to train officers and employees in application or science and technology to problems of foreign policy**

The Secretary shall, to such extent or in such amounts as are provided in appropriation Acts, enter into short-term and long-term contracts, including contracts for the services of consultants, and shall make grants and take other appropriate measures in order to obtain assistance from knowledgeable persons and organizations in training officers and employees of the United States Government, at all levels of the Foreign Service and Civil Service--

(1) in the application of science and technology to problems of the United States foreign policy and international relations generally; and

(2) in the skills of long-range planning and analysis with respect to the scientific and technological aspects of United States foreign policy.

**(d) Detached service for graduate studies**

In obtaining assistance pursuant to subsection (c) of this section in

training personnel who are officers or employees of the Department of State, the Secretary may provide for detached service for graduate study at accredited colleges and universities.

(Pub L. 95-426, Title V. § 504, Oct. 7. 1978 92 Stat. 983; H. Res. 89, Feb. 5, 1979; Pub. L. 97-241. Title V, I 505(a)(2), Aug. 24, 1982, 96 Stat. 299; Pub.L. 100-418, Title V § 5171(d), Aug. 23. 1988. 102 Stat. 1453.)

**HISTORICAL AND STATUTORY NOTES**

**Revision Notes and Legislative Reports**

**1978 Act.** House Report No. 95-1160 and House Conference Report No. 95-1535, see 1978 U.S. Code Cong. and Adm. News, p. 2424.

**1988 Act.** House Conference Report No. 100-576, see 1988 U.S.Code Cong. and Adm. News, p. 1547.

**References In Text**

Public Law 96-517, referred to in subsec. (a)(3)(A). is Pub.L. 96-517, Dec. 12, 1980, 94 Stat. 3015. which enacted sections 200 to 211 and 301 to 307 of Title 35, Patents, amended section 11 13 of Title 15, Commerce and Trade, sections 101 and 117 of Title 17, Copyrights, sections 41, 42, and 154 of Title 35, and sections 2186, 2457, and 5908 of Title 42, The Public Health and Welfare and enacted provisions set out as notes under sections 14 and 41 of Title 35. For complete classification of this Act to the Code, see Tables.

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsec. (a)(3)(A), is Pub.L. 96-480, Oct- 21, 1980, 94 Star. 2311, as amended, which is classified generally to chapter 63

(section 3701 et seq.) of Title 15. Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

**Amendments**

**1998 Amendment.** Subs". (a). Pub.L. 100-418 designated existing provisions as par. (1) and added pars. (2) and (3).

**1982 Amendment.** Subsec. (e). Pub.L. 97-241, struck out subsec. (c), which provided that not later than lan.20, 1979, the Secretary transmit to the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives, and to the Committee on Appropriations and the Committee on Foreign Relations of the Senate, a report on the implementation of his responsibilities under this title, which report, was to include an assessment of the personnel required in order to carry out such responsibility, existing and planned programs for research and analysis to support long-range planning for the application of science and technology, to foreign policy, existing and planned programs for training officers and employees of the United States Government pursuant to subsec. (c) of this section, and existing and planned programs to enter into long-term contracts with academic and other organizations for assistance in training and in obtaining studies, analyses, and recommendations with respect to the application of science or technology to problems of foreign policy.

**Change of Name**

The name of the Committee on International Relations of the House of Representatives was changed to Committee on Foreign Affairs, effective Feb. 5. 1979, by House Resolution 89, 96th Congress.

**Multilateral Agreement Governing Use of Nuclear-Powered Satellites.**

Section 608 of Pub.L. 95-426, as amended by Pub.L. 97-241, Title V, §505(a) (2), Aug. 24, 1982. 96 Stat. 299, provided that:

"(a) The Congress finds that--

"(1) no international regime governs the use of nuclear-powered satellites in space;

"(2) the unregulated use of such technology poses the possibility of catastrophic damage to human life and the global environment; and

"(3) this danger has been evidenced by mishaps encountered, despite certain precautions, by nuclear-powered satellites of both the United States and the Soviet Union.

"(b) It is therefore the sense of the Congress that the United States should take the initiative immediately in seeking a multilateral agreement governing the use of nuclear-powered satellites in space.

"(c) [Repealed. Pub.L 97-241, Title V. § 505(a) (2), Aug. 24, 1982, 96 Stat. 299.]"

**CROSS REFERENCES**

Assistance in carrying out functions of the Institute for Scientific and Technological Cooperation. see 22 USCA 4 3503.


# Index to the Handbook

## A

## B



## C

**D**



**E**



**F**

## G



## I



## L



## N

## O



## P



## R

## S



## T



## U

# DOE International Agreements Evaluation Questionnaire

General Guidelines for Completing the Questionnaire Form

This questionnaire must be completed by Program Office staff for:

- New international agreements
- Agreements coming up for renewal

A completed questionnaire must be submitted to PO-82 along with the draft agreement text, in the case of each new agreement, or with the notification by the Program Office of each renewal decision.

DOE intends that each international agreement meet three broad evaluation criteria (see Handbook, p. III-2). These criteria are highlighted, one to a page, in bold on this questionnaire form. This evaluation process will help Program Office and Policy Office staff to assess the technical merit and the policy relevance of each of DOE's international agreements. It also will facilitate the Circular 175 review of each agreement.

Please provide responses to each of these ten questions in the space provided as concisely as you can. Where possible, these questions may be addressed directly in the text of the agreement, in which case note on the questionnaire that the question has been covered in the agreement itself. If you need more space, use additional pages and reference the question number. If the required information is not available, or if you think the question does not apply to the agreement, please indicate that in the space provided. Please do not leave any questions blank.

In the case of new agreements, please address anticipated benefits, costs, outcomes and accomplishments, and for renewal agreements cover past as well as anticipated future benefits, costs, outcomes and accomplishments.

This questionnaire on International Agreements supersedes all previous questionnaires you may have been asked to complete on this subject. Your attention to this important aspect of the agreement preparation and clearance process is appreciated.

A template for responding to these questions is on a diskette included with the Handbook. Templates are provided in several versions of WordPerfect and Microsoft Word for your convenience in preparing and submitting your responses.

The criteria and questions have been discussed and refined in various meetings with the DOE Program Offices and others. If you have questions or suggestions regarding what is called for in this form, contact the appropriate person in PO-82 listed in the Contact List in the Handbook, Appendix A.

My staff and I are eager to assist you in any way we can. Thank you for your attention to this important matter.

**Robert S. Price, Jr.**
**Director**
**Office of International Science & Technology Cooperation**
**U.S. Department of Energy**

**CRITERION 1. The international agreement fits within the objectives of the initiating Program Office.**

1. What are the technical goals of the agreement?

2. What are the other non-technical/policy goals of the agreement?

3. What are the specific outcomes (milestones) and anticipated products for the agreement?

**CRITERION 2. This international agreement fits within DOE'S overall objectives and within U.S. national policy objectives.**

4. How does this agreement support DOE's Strategic Plan? (Please be specific.)

5. Will technologies be transferred from the U.S. or to the U.S.? If so, please be specific.

6. What are the potential commercial benefits and costs to U.S. firms?

7. What are the environmental implications (potential benefits or impacts) of the activities under the agreement?

**CRITERION 3. This international agreement provides benefits that justify the costs to DOE and to the U.S. Government.**

8. What are the benefits to be derived from the activities under this agreement?
   - Discuss what will be accomplished that could not be done by the U.S. alone.
   - Discuss what new scientific and technical information will result.
   - Discuss the potential political benefits?
   - Describe any other benefits that might flow from this agreement, such as time savings or access to unique facilities.

9. What costs have been and will be incurred?
   - Discuss manpower, travel, and material resource costs where applicable.
   - Discuss any cost-sharing arrangements with the bilateral partner.
   - Describe any potential political costs.

10. What amounts and sources of funding have been and will be used?
    - Discuss whether adequate resources are available to accomplish the goals and objectives of the agreement.

## DOE International Agreements Handbook Suggestion Form

The purpose of this Handbook is to ensure that the Department's international science and technology agreements are properly coordinated internally (Under Secretary, other interested program offices, Policy and the General Counsel) and externally (Departments of State and Commerce, Office of Science and Technology Policy, United States Trade Representative and the Office of Management and Budget). After you have worked with this Handbook for a while, we would appreciate your comments and suggestions for improvement. As the Handbook will be a "living document" your comments and/or suggestions will be taken into consideration as the need for updating arises.

Please consider the following questions in offering your suggestions. If you find shortcomings in the Handbook, please explain as specifically as possible how the Handbook could be improved.

1. Does the Handbook address the questions you have when you are preparing a new international science and technology agreement or revising an existing agreement?

2. Are you easily able to find the information about international agreement creation or renewal that you need?

3. Does the information presented in the Handbook seem adequate? Accurate? Clearly presented?

4. Please offer any other comments or suggestions that you think will help make this Handbook more useful to you.

Your name (optional):_____

Thank you for your suggestions. Please send this completed form to:

**Wanda M. Klimkiewicz**
**Office of International Science and Technology Cooperation**
**Office of Policy and International Affairs (PO-82)**
**U.S. Department of Energy**
**Washington, D.C. 20585**