

**SUMMARY OF CHANGES TO
DOD 7000.14-R, VOLUME 12, CHAPTER 9**

“INTERNATIONAL AGREEMENTS”

All changes are denoted by **blue font**

**Substantive revisions are denoted by a ★ preceding the section,
Paragraph, table or figure that includes the revision**

Hyperlinks are denoted by *underlined, bold, italic, blue font*

PARA	EXPLANATION OF CHANGE/REVISION	PURPOSE
090502.A	Deleted obligation determination	Clarification
090505.C	Deleted. Incorporated relevant guidance in paragraph 090505.A	Update

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CHAPTER 9

INTERNATIONAL AGREEMENTS0901 OVERVIEW

090101. Purpose. This chapter establishes the financial procedures that shall be followed when DoD Components initiate, develop, and request formal review of international agreements and any annexes, appendices, amendments, or modifications thereto.

0902 GENERAL

090201. The term “international agreement” includes any document, among others, identified as an international agreement, memorandum of understanding, memorandum of agreement, memorandum of arrangement, exchange of notes, exchange of letters, or technical arrangement with one or more foreign governments (including their agencies, instrumentalities, or political subdivisions) or with an international organization. It does not include Foreign Military Sales (FMS) transactions and contracts entered into under the provisions of the Federal Acquisition Regulation or agreements financed with security assistance funds. The latter agreements are implemented under provisions identified in [Volume 15](#) of this Regulation.

090202. Each international agreement submitted for coordination must contain a fiscal and legal memorandum in accordance with [DoD Directive 5530.3](#), “International Agreements,” paragraphs 9.3.2 and 9.3.3, or a Summary Statement of Intent (SSOI) in accordance with [DoD Instruction 5000.2](#), “Operation of Defense Acquisition System,” Enclosure 9, section E9.4.1 and the [Defense Acquisition Guidebook](#), Chapter 11, paragraph 11.2.2.1. The fiscal memorandum should identify all financial implications of the agreement and provide all information required for a complete understanding and analysis of those implications. The legal memorandum should identify the statutory authority for any obligation or expenditure of United States (U.S.) appropriated or nonappropriated funds involved in the agreement, as well as the legal basis for any use of U.S. Government property by or on behalf of a foreign government or international organization contemplated by the agreement. The SSOI, in addition to providing information on the fiscal implications and the legal basis for the agreement, provides information such as overview, objective, partner nations, project management, benefits/risks to the U.S., potential industrial base impact, procurement, information security and technology transfer, and points of contact. It is the responsibility of the proponent to provide the references and details supporting the agreement as requested by the approving officials.

0903 LEGAL CONSIDERATIONS

090301. General. Legal authority information is critical to the preparation of an agreement and is the basis for determining the legal authority for entering into the agreement and subsequent financial requirements. The legal information is used by financial management officials to review applicable international agreements and determine the existence of any special pricing or funding requirements. The legal information normally provides the following, as relevant:

A. Special Legal Pricing Requirements. The legislative authority to enter into an agreement also may mandate special pricing requirements on the U.S. Thus, the legal authority information should identify any peculiar pricing that must be reflected in the agreement. In the absence of specific legal authority to price on other than a full cost basis, DoD services and materials shall be priced on a full cost basis.

B. Legal Requirement for the Disposition of Monies Collected by the Department of Defense (DoD). Amounts collected as reimbursements for DoD material or services or new procurements must be deposited into the miscellaneous receipts of the U.S. Treasury, unless there is specific legal authority to credit collections to a DoD appropriation or fund. Options available for deposit of collections include deposit to an appropriation account, a commercial bank account, or a U.S. Treasury deposit account.

C. Legal Requirement for Recognition of Obligational Authority. Obligational authority can be created only to the extent that funds are collected and deposited into the U.S. Treasury and appropriated by Congress, unless there is express legal authority to create obligational authority on a dependable undertaking (contract authority) or other basis.

D. Special Prohibitions or Requirements on the Use of Appropriated Funds. The legal information section should identify any special prohibitions or requirements on the use of appropriated funds in support of the agreement. These special prohibitions are in addition to the standing prohibitions discussed in paragraph 090404. An example of a special requirement is when FMS credit funds are to be used to finance co-production or licensed production in a foreign country. The approval of such use requires the Secretary of State first to advise the Congress. (See section 42(b) of the Arms Export Control Act ([AECA](#)).)

0904 FISCAL CONSIDERATIONS

The fiscal information in the fiscal memorandum or SSOI documents the various financial considerations involved in implementing an international agreement. Specific considerations to be included in the fiscal information are as follows:

090401. Financing Sources for U.S. Costs

A. The fiscal information shall include a schedule of proposed financing sources to be used by the sponsoring DoD Component to implement the agreement. Financing

sources may be current appropriations or funds, provision for inclusion in the Future Years Defense Program (FYDP), or a statement of an intent to include in future program and/or budget requests or FYDPs. This information should be in a schedule form by FY as illustrated in Table 9-1. When current appropriations or funds are to be used as a financing source, the fiscal information section should identify the specific appropriation(s) or fund(s), the FYDP Program Element, the amount(s) available therein, and the respective amounts to be used. If the source of financing in current appropriations is in two accounts, the applicable sources of financing should be supported by details showing the specific financing appropriation account symbols.

B. If the proposed international agreement is, in fact, a firm order for goods or services, a formal certification of fund availability shall be included. Applicable funds shall be committed in accordance with [Volume 3](#) of this Regulation.

090402. Provisions for the Disposition of Funds Collected. The fiscal information section should describe the planned disposition of any funds collected from the foreign country or international organization. The four possible alternatives for disposition of amounts collected are as follows:

A. Reimbursement to Financing DoD Appropriations or Funds. If reimbursements are to be returned to the financing DoD appropriation accounts, the fiscal memorandum or SSOI should identify the accounts to be reimbursed. This identification need not specify the fiscal year of the appropriations. Normal reimbursable accounting procedures shall apply.

B. Deposit in the U.S. Treasury as Miscellaneous Receipts. Without statutory authority to reimburse DoD appropriations or funds or to make other disposition, collections shall be deposited into the U.S. Treasury as miscellaneous receipts. The miscellaneous receipt account to be credited with such collections shall be specified by the depositor. DoD accounting systems should accumulate costs incurred on behalf of the other participant(s), establish an accounts receivable identified to the applicable miscellaneous receipts account and bill such amounts.

C. Deposit in a U.S. Treasury Deposit Account. If a Treasury deposit account has been established for the agreement, the fiscal memorandum shall identify the appropriate U.S. Treasury account symbol.

D. Deposit in a Commercial Bank Account

1. If execution of a proposed agreement contemplates use of a commercial bank account for a foreign country's funds, such a provision shall be included in the fiscal memorandum or SSOI with a description of intended bank account operation.

2. For contracts administered by DoD, two funding accounts must be cited: the DoD appropriation account for the U.S. share and the commercial bank account for the share of the other participant(s). The fund citation on the contract shall indicate the commercial bank account rather than the normal accounting classification code. In this case, only the Department can draw down on the commercial bank account.

090403. Use of Amounts Credited. Foreign contributions collected by a DoD Component under terms of a cooperative project on a cost sharing basis from a foreign country or North Atlantic Treaty Organization (NATO) may be credited to a financing DoD appropriation or fund. Such contributions, however, are available only for the payment of the share of project expenses allocated to the foreign country or NATO making the contribution. The fiscal memorandum or SSOI should certify that such collections are to be used for purposes as prescribed herein. Payments for which such amounts are available include the following:

A. Payments to contractors and other suppliers (including DoD and other participants acting as suppliers) for necessary articles and services.

B. Payments for any damages and costs resulting from the performance or cancellation of any contract or other obligation.

C. Payments or reimbursements of other program expenses, including program office overhead and administrative costs.

D. Refunds to other participants.

090404. Availability of Financing Sources. There are two general prohibitions on the use of appropriated funds for international agreements. In addition, the legal section may identify other prohibitions. It is implicit in the identification of the financing sources set forth in paragraph 090401, that funds are available. It is desirable, however, to include in the fiscal information section a certification that all legal and policy prohibitions on the use of funds have been complied with. The general prohibitions are as follows:

A. No funds designated by the Congress for NATO or major non-NATO cooperative research and development under [10 U.S.C. 2350a](#) may be used to procure equipment or services from any foreign government, foreign research organization, or other foreign entity (including NATO participants) to the agreement.

B. U.S. Government military assistance funds (i.e. Foreign Military Financing, FMS loans, or FMS credits) are not available to finance a foreign participant's share of the cost of a cooperative project authorized by section 27 of the [AECA](#) or a cooperative development project with a major non-NATO ally under [10 U.S.C. 2350a](#).

090405. Financial and Nonfinancial Contributions. A contribution to an international agreement may be financial, nonfinancial, or both. Nonfinancial contributions may be in the form of defense articles or defense services needed for the cooperative project. In the event

that the contribution is nonfinancial, a price analysis must be made to ensure the valuation assigned to such nonfinancial contribution is fair and reasonable. The fiscal information section shall summarize the results of such an analysis. The price analysis shall be based on prior cost experience for the nonfinancial contribution to be provided. When a foreign contribution is in the form of foreign currency or the awarding of a contract in a foreign country, the foreign currency contribution generally shall be valued at the exchange rate current at the time that the agreement is prepared. There shall be no subsequent modification of the valuation because of changes in the currency exchange rate. The fiscal memorandum or SSOI shall display the value of the currency in terms of U.S. dollars.

090406. Valuation of Nonfinancial Contributions. The value of all nonfinancial (background data/information, software, services, military and civilian labor, materiel, equipment, and facilities) contributions to an agreement is to be determined and considered for the evaluation of equitableness of the proposed project. The fiscal memorandum or financial section of the SSOI shall describe the nonfinancial contributions, indicate their value, and state the method used in determining the valuation. The nonfinancial contributions shall also be valued in terms of U.S. dollars in the fiscal memorandum or SSOI. The alternatives for determining the value of nonfinancial contributions are as follows:

A. Full Costs. Volume 11A, Chapter 1 of this Regulation provides guidance on the specific cost elements and identification methods for pricing sales to private parties. These same methods shall be followed in valuing nonfinancial contributions to an international agreement.

B. Other Than Full Costs. An agreement that requires the identification or use of less than full cost is normally authorized only when a reciprocal pricing agreement has been entered into by the Department and the other party (parties) to the agreement. The agreement should demonstrate that costs to be excluded mutually have not been considered by the other party in a determination of equitableness.

C. Cost Recoupment Waivers. In the event that less than full cost is being identified on the basis of a cost waiver, the date of the waiver and its approving authority must be provided in the SSOI. Copies of such waivers shall be made available on request.

090407. Reasonable and Necessary Expense. Any obligation of DoD appropriations under an international agreement must be supported by a showing that it is a reasonable and necessary expense required for the accomplishment of DoD missions, unless the use of DoD funds for other than a DoD mission specifically is authorized by statute.

0905 PROPOSED AGREEMENT

090501. An agreement must contain language that implements the requirements established by U.S. law or regulation. This section discusses the financial policies that must be followed and provides appropriate cross references to other parts of this Regulation that provide more specific guidance.

090502. Fund Availability Qualification

A. Because agreements may involve future years in which the Congress has not yet appropriated funds, all agreements that require that DoD provide financial contributions will contain a funds availability clause to prevent a premature recording of an obligation against a future year's appropriation.

B. Examples of typical fund availability qualification clauses inserted in an international agreement follow:

1. "All undertakings of the U.S. Government under this agreement and any annexes, appendices, amendments, or modifications thereto, are expressly subject to the availability of U.S. funds for such purpose."

2. "The obligations of each participant under this agreement are subject to the availability of funds for those purposes."

090503. Reconciliation of Agreement Dollar Value to Financing Sources. An international agreement must set forth the dollar value of the agreement and portions of the dollar value that must be borne by each participant. This cost sharing may be in the form of monies or nonfinancial contributions. A preliminary requirement is to ensure that any obligations that the Department may be required to incur in implementation of the agreement have been identified in the fiscal information section. Nonfinancial contributions, described in the scope section, may be valued in the fiscal information section as part of the overall financial contributions, or described solely in the scope section without valuation in the financial information section. The financial information in the fiscal memorandum or SSOI will value all financial and nonfinancial contributions identified in the international agreement.

090504. Adherence to Prescribed Pricing Rules

A. In the event that an international agreement provides for nonfinancial contributions, there must be assurance that proper pricing procedures have been followed. Paragraphs 090405 and 090406 of this volume discuss special requirements that may be applicable to certain agreements. The text of an agreement must be reviewed carefully to ensure compliance with these paragraphs. An area of special pricing attention is charges for existing DoD technical data and computer software, or the use of equipment or facilities.

B. Preexisting technical data and computer software or such data developed outside the scope of an agreement is normally referred to as background data. When background data is a nonfinancial contribution, its value for determining equitability is its full (total) cost of development, adjusted for any special modifications, shipping, installation, etc. When the original development cost is unknown, background data should be valued at the cost of similar data, or the estimated cost to reconstruct the data.

C. Background data may be provided for use in furtherance of the purpose of an international agreement as long as it is used solely in connection with the purpose of the agreement. However, an agreement must specify that if the background information is used for any other purpose, approval of the originating participant must be obtained. The following specifics apply:

1. If the data are to be used for cooperative production purposes, the Department must receive appropriate financial credit as part of the DoD share of project cost, unless a cost recoupment waiver has been approved. Any provision for waiver should be identified in the fiscal information section.

2. If the data is to be used for development and production purposes, a technology transfer fee may be applicable for the development phase. This fee may be offset by a nonrecurring cost recoupment charge when production occurs.

3. All background information exchanged shall be used only for the purposes of the agreement, and is not to be transferred to any third party without the approval of the originating participant.

D. Equipment and facilities provided for use in the furtherance of the purpose of an international agreement should be based on an amortized rate. This amortized rate should be based on the cost and useful life of the equipment or facilities, and applied to the length of time the equipment or facilities will be used in the furtherance of the purpose of the international agreement. Standard rates, if available, can also be used.

090505. Determination of Program Equitableness

★ A. Public law and DoD policy require that international agreements that involve cost sharing be equitable. The U.S. and the other participants to an international agreement shall contribute their equitable share of the full cost in funds or in defense articles or services needed to execute the cooperative project, and shall receive their equitable share of the results of the cooperative project in the form of defense articles or services. **A participant's cost share should be proportionately equal to the benefits it receives.** The following methodology for determining equitability is in direct response to those requirements and is based on the authority of the Under Secretary of Defense (Comptroller) in accordance with [10 U.S.C. 135](#) and [DoD Directive 5118.3](#), "Under Secretary of Defense (Comptroller)/Chief Financial Office, Department of Defense," for establishing and supervising the execution of uniform DoD policies, principles, and procedures for international financial matters, including the adequacy of international financial agreements.

B. The SSOI or fiscal memorandum to a proposed international agreement must clearly explain why the agreement is considered equitable. Prior to approval of all proposed international agreements, a determination of agreement equitability must be made by the approving DoD officials. It is critical that sufficient detail and information be provided to clearly demonstrate to approving officials that the proposed international agreement is equitable.

C. Calculation of Expected Contribution. In support of an equitability determination by DoD approving officials, the expected contribution should be calculated and presented in the SSOI or supporting documentation using one of the methods below:

1. Number of Participants Method. This is the preferred method of calculating the expected contribution for cooperative feasibility studies, research and development efforts, and test and evaluation programs and for agreements that establish management or oversight program offices. It is the method that should be employed when estimated unit production quantities are not known or the number of benefiting assets is equal. Under the number of participants method, the expected contribution is determined by dividing the agreement costs by the number of participating nations. An equitable share is where all participating nations equally share the total cost and the benefits. An example of this method is provided in Table 9-2.

2. Estimated Unit Production Method. This is the preferred method of calculating the expected contribution for an agreement that cooperatively establishes a program for the production of defense articles or weapon systems. It is used when specific unit production quantities are known or can be estimated. Under the unit production method, the shares are considered to be equitable when the contribution is proportionately equal to the share of the program production to be received. An example of this method is provided in Table 9-3. An equitability statement is required in the SSOI or accompanying documentation, and it must clearly present the calculation showing production estimates in relation to the total cost of the international agreement or production program.

3. Benefiting Assets. This is the preferred method of calculating the expected contribution when the number of benefiting assets are known or can be estimated. Under the benefiting assets method, the shares are considered to be equitable when the contribution is proportionately equal to the number of assets that will be benefited. An example of this method would be Table 9-3 where the number of units is replaced with benefiting assets. An equitability statement is required in the SSOI or accompanying documentation, and it must clearly present the calculation showing benefiting assets in relation to the total cost of the international agreement.

4. Other Methods of Calculation. There may be situations when neither of the above three methods apply, and another calculation is possible. For example, an agreement under the auspices of NATO, between the U.S. and other NATO nations, may require the U.S. to contribute an amount equal to the usual percentage of U.S. contributions to NATO. An equitability statement is required in the SSOI or accompanying documentation. The calculation and justification for use of that calculation must be clearly presented.

090506. Sales and Transfers of Technical Data Developed Under an Agreement. An agreement should provide that, in the event technical data developed under the agreement is sold or transferred to third parties, a charge may be made to recoup a pro-rata share of each participant's investment. The agreement also must provide that background information and data developed outside the program not be retransferred without the prior approval of the owner of the information or data, and contain provisions for any applicable charges. For third party sales and transfers, or the addition of new participants, any recoupment charge for the information or data developed under the program must be shared on the basis of the participants' financial contribution to the development of the item or technology. The amount of the charge and the procedures for assessing and distributing it shall be determined mutually by the participants prior to the approval of any such third party sale consistent with the policies and laws of each participant. The agreement also should provide that any participant may reduce or waive the assessment of its share of the levy in accordance with its laws and policies. Furthermore, the agreement should provide for rights of use of information developed under the agreement for defense purposes of a participant without payment to the other participant(s).

090507. Taxes, Duties, and Similar Charges. Agreements may provide that, insofar as existing laws and regulations permit, the participants shall use their best efforts to ensure that readily identifiable taxes, customs duties, and similar charges on the program components and services shall not be levied in connection with the project. If an agreement obligates the U.S. Government to bear the cost of any U.S. taxes, duties, or similar charges levied in connection with the program, the legal memorandum or SSOI must identify the legal authority for such U.S. obligation.

090508. Advance of DoD Funds

A. An advance constitutes a disbursement of DoD funds before an authorized DoD official has certified that materials have been delivered or ordered services performed. An agreement shall not provide for DoD advance payments, unless the conditions for such advances, as set forth in [Volume 4, Chapter 5](#), of this Regulation are met. Basically, advances to foreign countries are authorized when required for compliance with the laws and ministerial regulations of the foreign country and is further required by the agreement.

B. When possible, advances shall be made for no more than the amount necessary to fulfill the DoD share of project expenses for one month. Advances and prepayments shall not exceed the amount necessary to fulfill the DoD share of project expenses for a current fiscal quarter. If monies are paid in advance and deposited into commercial banks, provision must be made to ensure that the agreement requires:

1. Payment of interest at competitive rates;
2. Timely identification of interest earned by each party; and
3. Interest disposition in accordance with the participants' instructions.

C. The DoD share of funding required to support an international project shall be obtained in full by appropriation, and no part of such funding shall be derived from interest earnings on U.S. contributions. In view of this policy, the U.S. Government share of interest earned on U.S. advance payments must be returned to the U.S. Treasury Miscellaneous Receipts Account 3210, "General Fund Proprietary Receipts, Defense Military, Not Otherwise Classified." The interest shall not be used to reduce a future call for funds, nor used for any project cost that would result in funding derived outside the appropriation process.

D. Advances of DoD funds in excess of 90 days or \$5 million require consultation with the Department of the Treasury. Contact with the Department of the Treasury shall be through the Office of the Under Secretary of Defense (Comptroller).

090509. Billing Requirements. When payments are to be made, the agreement or subsequent financial arrangements must include the following information:

A. Billing Cycle. Bills for incurred costs are to be rendered on a 30-day cycle. This is a U.S. Treasury requirement and must be adhered to by DoD. However, in the negotiation process and at the initiation of other participants, agreement may be reached on up to a 90-day billing cycle.

B. Collecting Office. The agreement or subsequent financial arrangements shall provide the name and address of the organization to which payments shall be made. It also is desirable to set forth a position title and a telephone number to which questions may be addressed.

C. Paying Office or Offices. The agreement or subsequent financial arrangements shall provide the name and address of the organization that is responsible for making payments under the agreement. It also is desirable to set forth a telephone number and a position title to which questions may be addressed.

D. Payment Terms. The payment due date shall not be more than 30 days from the date of the invoice, date prepared.

E. Documentation in Support of Billings. The agreement or subsequent financial arrangements must identify the form of the bill and the specific supporting details.

F. Currency of Payment. Normally, payment shall be in the currency of the supplying nation or the lead country if joint financing is provided for in the agreement. The invoice shall identify the amount paid in foreign currency at the current exchange rate and the equivalent conversion rate in U.S. dollars.

090510. Special Types of Agreements

A. Agreements for Reciprocal Exchange of Materials or Services. These agreements must set forth the time period allowed for exchange of materials and services. They also must set forth financial settlements that must be made if the exchange does not take place. DoD services or materials provided are priced in accordance with [Volume 11A, Chapter 1](#), of this Regulation.

B. Cooperative Research, Development, Test and Evaluation, Technical Data Exchange, Co-production, Licensed Production, and Related Standardization Agreements That Are Not Implemented through the Security Assistance Program. Full costs must be identified and shared equitably. Cost sharing may be accomplished through the following:

1. Pooling of monies and designation of a lead country to manage the program, collect cash, and award contracts. Specific shares of program cost are set forth in the agreement.

2. No pooling of monies or designation of a lead country. Specific efforts to be accomplished by each participating country and estimated costs of such efforts are set forth in the agreement.

(\$ in Millions)

Financing Sources	Current Year	Current Year + 1	Current Year + 2	Totals
U.S./PE 0603456	1.5	1.0	0.0	2.5
U.S./PE 0603567	0.0	0.5	1.0	1.5
France	1.5	1.5	1.0	4.0
Germany	1.5	1.5	1.0	4.0
Totals	4.5	4.5	3.0	12.0

TABLE 9-1: Example International Agreement Financing Schedule

Step 1: Determine the total program cost to the U.S. and other participants.

U.S. Share	\$150
Other Participants	<u>300</u>
Total Cost	\$450

Step 2: Determine the percentage of the U.S. share of the total costs under the agreement.

U.S. Share	\$150 = 33% share
Total Cost	450

Step 3: Determine the total number of participants and calculate the U.S. share on a percentage basis.

Total Participants	3
U.S.	1 = 33% U.S. as a percentage of Participants

Step 4: Compare the results of step two to step three. If the result of step two is equal to the result of step three, the U.S. appears to be paying an equitable share.

TABLE 9-2: Calculation of Expected U.S. Contribution Using the Number of Participants Method

Step 1: Determine the total program cost to the U.S. and other participants.

U.S. Share	\$150
Other Participants	<u>300</u>
Total Cost	\$450

Step 2: Determine the percentage of the U.S. share of the total costs under the agreement.

U.S. Share	\$150 = 33% share
Total Cost	450

Step 3: Determine the total number of production units or benefiting assets under the agreement.

U.S. Units/Assts	20,000
Other Participants	<u>40,000</u>
Total Units/Assets	60,000

Step 4: Determine the percentage of the U.S. share of the total number of production units or benefiting assets under the agreement.

U.S. Units/Assets	20,000 = 33% share
Total Units/Assets	60,000

Step 5: Compare the results of step two to step four. If the result of step two is equal to that of step four, the U.S. appears to be paying an equitable share.

TABLE 9-3: Calculation of Expected U.S. Contribution Using the Number of Participants Method