

Approved: 12-13-2019

SUBJECT: FOREIGN ENGAGEMENTS WITH DOE NATIONAL LABORATORIES

POLICY

International research collaboration and the openness of the U.S. scientific community continue to be a bedrock for U.S. scientific research and technological development. For this reason, the Department is committed to making DOE National Laboratories available to non-DOE entities, including foreign entities,¹ provided such work is consistent with or complementary to the missions of DOE and the laboratory to which the work is to be assigned, and does not impede the laboratory's ability to successfully accomplish its DOE missions. For these foreign engagements,² additional review criteria and procedures are needed to ensure that the proposed engagements:

- Align consistently with the strategic interests and foreign policies of the United States;
- Are legally sound and compliant with U.S. laws and regulations;³
- Address any counterintelligence and national security considerations; and
- Consider the risks associated with the sharing of DOE research and technologies.

In addition, review of all potential foreign engagements must take into account, as appropriate, access to the laboratory, research activities, information, and technology by sensitive countries; protection of classified and sensitive unclassified information; intellectual property rights; and U.S. competitiveness requirements.

Further, the DOE National Laboratories are restricted from conducting foreign engagements with Countries of Risk⁴ in the scientific and technology areas identified as restricted in the current Science and Technology (S&T) Risk Matrix maintained by the DOE Federal Oversight and

¹ For purposes of this Policy, "foreign entities" include: (1) any foreign government or foreign government agency or instrumentality thereof; (2) any international organization; (3) any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its territories; (4) any form of business enterprise organized or incorporated under the laws of the United States or a State or other jurisdiction within the United States which is owned, controlled or influenced by a foreign government, agency, firm, corporation, or a person who is not a citizen or national of the United States; and (5) any person who is not a citizen or national of the United States.

² This policy does not apply to any agreements related to mutual defense.

³ These include the International Traffic in Arms Regulations, the Export Administration Regulations, and the Assistance to Foreign Atomic Energy Activities Regulation (10 CFR Part 810).

⁴ Foreign Country of Risk. Any foreign country determined to be of risk by the Office of Science in consultation with the Under Secretary for Science; the Under Secretary of Energy; the Under Secretary for Nuclear Security; and the Office of Intelligence and Counterintelligence. Referred to as Country or Countries of Risk throughout this Policy.

Advisory Body (FOAB)⁵, unless an exemption is granted. Requests for exemptions can be made by the cognizant DOE Field Element, in coordination with the laboratory, as described below.

PURPOSE AND SCOPE

This Policy applies to engagements between DOE laboratories and foreign entities under the following mechanisms:

1. Memoranda of Understanding (MOUs);⁶
2. Strategic Partnership Projects (SPPs);⁷
3. Cooperative Research and Development Agreements (CRADAs);
4. Agreements for Commercializing Technology (ACTs); and/or
5. Any other similar legally binding contractual instrument between a DOE laboratory and one or more foreign entities.⁸

This Policy outlines the requirements that apply to DOE Headquarters (HQ) review of proposed foreign engagements and identifies important considerations that must be addressed when working with foreign entities.

REVIEW OF ENGAGEMENTS AGAINST THE CURRENT DOE SCIENCE & TECHNOLOGY (S&T) RISK MATRIX

All potential foreign engagements with Countries of Risk must first be reviewed by the cognizant DOE Field Element, in coordination with the laboratory, to determine if the engagement is in an area identified as restricted in the current S&T Risk Matrix before submitting the proposed engagement to DOE HQ for review as described below. All proposed engagements in areas that are not identified as restricted in the current S&T Risk Matrix can proceed with the normal DOE HQ review of foreign engagements. When a project is in an area identified as restricted in the current S&T Risk Matrix, the cognizant DOE Field Element must agree if a request for an exemption is warranted. Absent agreement to request an exemption, the proposed engagement is not pursued any further.

When the cognizant DOE Field Element agrees to request an exemption, a justification and clear description why the engagement benefits the United States is prepared, in coordination with the cognizant Program Secretarial Office. The exemption is then submitted through the appropriate

⁵ The DOE Federal Oversight Advisory Body (FOAB) is a DOE group established to identify and implement policy changes to address the risk associated with international research collaboration and foreign national access to the DOE scientific enterprise. The FOAB is responsible for reviewing and maintaining the Science and Technology Risk Matrix, processing exemption requests for instances where research collaboration is restricted, and providing feedback on Departmental science and technology engagement policies.

⁶ MOU includes Memorandum of Understanding, Statement of Intent, Letter of Intent, Declaration of Principles, or similar document between a DOE laboratory and a foreign partner. MOUs may not be entered into with individuals.

⁷ SPPs were formerly known as Work for Others (WFO) agreements.

⁸ Only includes other contractual instruments that require the laboratory to perform work for the foreign entity.

Cognizant Secretarial Office to the FOAB for review and to provide a recommendation, with final approval/disapproval being provided by the cognizant Under Secretary or their designee. If the exemption is granted, then the engagement may be submitted for DOE HQ review as described below.

DOE may consider broad exemptions for specific categories of engagements, such as those supported under government-to-government agreements and in line with National Security Council policy guidance, to ensure existing priorities are not unduly impeded. These broad exemptions will be handled as determined by the cognizant Under Secretary or their designee in consultation with the FOAB and the cognizant DOE Program Office.

DOE HQ REVIEW REQUIREMENTS

After completing the review of the current S&T Risk Matrix and the exemption process described above, as applicable, the following requirements for DOE HQ review apply to all proposed laboratory engagements with foreign entities. DOE HQ review of proposed foreign engagements should be completed in the timeframes identified herein so as not to unnecessarily impede the collaboration between DOE laboratories and foreign entities. The DOE review specified in this Policy supplements and does not obviate the need for other approvals and conditions that are required under other applicable laws, regulations, and directives.

MOUs

Prior to negotiation of the proposed laboratory MOU with one or more foreign entities, the draft text of the proposed MOU must undergo review by the Senior Counterintelligence Officer (SCIO) for the laboratory, the laboratory export control office, and DOE Field Counsel, followed by HQ review. HQ review of such MOUs requires pre-negotiation review and concurrence from each of the following offices:

1. Cognizant Secretarial Office (CSO);⁹
2. Program Secretarial Office (PSO);¹⁰
3. Office of International Affairs (IA);¹¹
4. Cognizant General Counsel Office (GC);
5. Office of Intelligence and Counterintelligence (IN);
6. Office of Defense Nuclear Nonproliferation (NA-20); and

⁹ The CSOs are Headquarters Assistant Secretaries, Deputy Administrators and Directors responsible for oversight or institutional management of DOE/NNSA facilities.

¹⁰ The PSOs are Headquarters Assistant Secretaries, Deputy Administrators, and Directors who have management responsibility for program planning, budgeting, and execution, of DOE/NNSA mission program activities. For MOUs with NNSA laboratories, if the PSO is not in NNSA their recommendation will be provided to NA-10.1.

¹¹ For MOUs with NNSA laboratories, IA will provide their recommendation to NA 10.1.

7. Office of Classification (AU-60), if involving potential access to or use of classified information.

As part of the package submitted for HQ review, laboratories must indicate in writing how the MOU aligns with each the following principles.

1. In the long-term, the engagement must be a benefit to DOE and/or the U.S. Government.
2. The partnership must be consistent with the foreign policy and national security interests and priorities of the U.S. Government.
3. Work under the MOU must comply with all applicable laws, U.S. Government policies and regulations, and DOE procedures.
4. Work under any proposed MOU must be consistent with the long-term goals and objectives of DOE and the relevant DOE programs must be notified.
5. The collaboration should not create a resource burden on a DOE Program Office or DOE Laboratory.
6. The partnership should aim to leverage domestic capabilities to advance U.S. scientific achievement or clean energy technologies and potentially enhance the Department's or laboratory's stature and global leadership.
7. The partnership should aim to advance global efforts in areas related to DOE's missions including, for example, environmental protection and remediation, energy security, development or adoption of clean energy technologies, or nuclear security and nonproliferation.
8. The partnership should aim to provide a benefit to the U.S. economy through lower cost technologies for consumers, export markets for domestic companies, U.S.-based jobs, or similar economic advantages.

In some cases, a foreign entity may require a copy of the agreement in its own language, in addition to English. In such cases, language conformance will be required to ensure the English and foreign language versions agree precisely in meaning. These services must be provided by the Department of State's Office of Language Services, and be coordinated by IA, with the costs for such services borne by the cognizant DOE Program Office or laboratory. No laboratory MOU may be signed in a foreign language until the HQ review has been completed and the State Department's Office of Language Services issues DOE an official comparison memo indicating that the two texts have the same meaning in all substantive respects.

An MOU with a foreign entity must be reviewed by HQ at least every five years to ensure these activities remain consistent with U.S. national security and other policies.

SPPs, CRADAs, ACTs and Other Contractual Instruments

HQ review of proposed laboratory work under a contractual mechanism with one or more foreign entities is initiated by the DOE Field Element or laboratory, and requires review and concurrence from each of the following offices:

1. Cognizant Secretarial Office (CSO);
2. Program Secretarial Office (PSO);¹²
3. Office of International Affairs (IA);¹³
4. Cognizant General Counsel Office (GC);
5. Office of Intelligence and Counterintelligence (IN); and
6. Office of Nonproliferation and Arms Control (NA-20).

The DOE Field Element or laboratory provides to the appropriate HQ offices a copy of the abbreviated proposal and any supporting documents, which may include the agreement itself and a full or summary statement of work. Each HQ office performs an independent review for different purposes, for example, for programmatic, technical or legal reasons, and may request additional documentation from the DOE Field Element or laboratory.

A project with a foreign entity must be reviewed by HQ at least every five years to ensure these activities remain consistent with U.S. national security and other policies.

Review Procedure

All DOE HQ reviews for MOUs and contractual instruments should be completed within 20 business days following receipt of the request. IA can coordinate the HQ review of the laboratories' proposed engagements with foreign entities if requested by the program offices. In all cases, a response will be provided by HQ to the DOE Field Element or laboratory within the 20 business day timeframe that indicates approval, disapproval, or the need for more time to review the request since some proposals may require additional time to review due to special circumstances. All issues identified by the DOE Field Element and HQ reviewing offices and communicated to the laboratory must be satisfactorily resolved before negotiation and signature of the proposed MOU or contractual instrument will be authorized.

For MOUs, the laboratory may negotiate and sign the MOU with the foreign entity or entities after all the required reviews are completed and concurrences are received. Any substantive departures from the approved MOU text must be reviewed by DOE Field Counsel before the MOU may be signed. Any changes in the identity of the foreign entity or entities must be reviewed by the laboratory's SCIO. A PDF copy of each final, fully executed MOU must be

¹² For activities at an NNSA laboratory, if the PSO is not in NNSA their recommendation will be provided to NA-10.1.

¹³ For activities at a NNSA laboratory, IA will provide their recommendation to NA 10.1.

submitted to IA or NNSA (at labagreements@hq.doe.gov or nnsalabagreements@mnsa.doe.gov), as applicable, within 20 days of signature.

For contractual instruments, the cognizant Contracting Officer (CO) may approve the project with the foreign entity or entities only after all the required reviews are completed and the concurrences are received. Execution of the work proposed under the contractual instrument shall not proceed without the final approval from the CO.



DAN BROUILLETTE
Secretary of Energy