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113th Congress, 2d Session – – – – – – – – – – – – – House Document 113–109

AGREEMENT FOR COOPERATION BETWEEN THE GOVERNMENT OF THE US AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM CONCERNING PEACEFUL USES OF NUCLEAR ENERGY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TEXT OF A PROPOSED AGREEMENT FOR COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM CONCERNING PEACEFUL USES OF NUCLEAR ENERGY, PURSUANT TO 42 U.S.C. 2153(b), (d)

MAY 9, 2014.—Message and accompanying papers referred to the Committee on Foreign Affairs and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

39–011 WASHINGTON : 2014

To the Congress of the United States:

I am pleased to transmit to the Congress, pursuant to sections 123 b. and 123 d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b), (d)) (the "Act"), the text of a proposed Agreement for Cooperation between the Government of the United States of America and the Government of the Socialist Republic of Vietnam Concerning Peaceful Uses of Nuclear Energy (the "Agreement"). I am also pleased to transmit my written approval, authorization, and determination concerning the Agreement, and an unclassified Nuclear Proliferation Assessment Statement (NPAS) concerning the Agreement. (In accordance with section 123 of the Act, as amended by title XII of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277), a classified annex to the NPAS, prepared by the Secretary of State in consultation with the Director of National Intelligence, summarizing relevant classified information, will be submitted to the Congress separately.) The joint memorandum submitted to me by the Secretaries of State and Energy and a letter from the Chairman of the Nuclear Regulatory Commission stating the views of the Commission are also enclosed. An addendum to the NPAS containing a comprehensive analysis of Vietnam's export control system with respect to nuclear-related matters, including interactions with other countries of proliferation concern and the actual or suspected nuclear, dual-use, or missile-related transfers to such countries, pursuant to section 102A of the National Security Act of 1947 (50 U.S.C. 403–1), as amended, is being submitted separately by the Director of National Intelligence.

The proposed Agreement has been negotiated in accordance with the Act and other applicable law. In my judgment, it meets all applicable statutory requirements and will advance the nonproliferation and other foreign policy interests of the United States.

The proposed Agreement provides a comprehensive framework for peaceful nuclear cooperation with Vietnam based on a mutual commitment to nuclear nonproliferation. Vietnam has affirmed that it does not intend to seek to acquire sensitive fuel cycle capabilities, but instead will rely upon the international market in order to ensure a reliable nuclear fuel supply for Vietnam. This political commitment by Vietnam has been reaffirmed in the preamble of the proposed Agreement. The Agreement also contains a legally binding provision that prohibits Vietnam from enriching or reprocessing U.S.-origin material without U.S. consent.

The proposed Agreement will have an initial term of 30 years from the date of its entry into force, and will continue in force thereafter for additional periods of 5 years each. Either party may terminate the Agreement on 6 months' advance written notice at the end of the initial 30 year term or at the end of any subsequent 5-year period. Additionally, either party may terminate the Agreement on 1 year's written notice. I recognize the importance of exec-

utive branch consultations with the Congress regarding the status of the Agreement prior to the end of the 30-year period after entry into force and prior to the end of each 5-year period thereafter. To that end, it is my strong recommendation that future administrations conduct such consultations with the appropriate congressional committees at the appropriate times.

The proposed Agreement permits the transfer of information, material, equipment (including reactors), and components for nuclear research and nuclear power production. It does not permit transfers of Restricted Data, sensitive nuclear technology, sensitive nuclear facilities, or major critical components of such facilities. In the event of termination of the Agreement, key nonproliferation conditions and controls continue with respect to material, equipment, and components subject to the Agreement.

Vietnam is a non-nuclear-weapon state party to the Treaty on the Non-Proliferation of Nuclear Weapons. Vietnam has in force a comprehensive safeguards agreement and an Additional Protocol with the International Atomic Energy Agency. Vietnam is a party to the Convention on the Physical Protection of Nuclear Material, which establishes international standards of physical protection for the use, storage, and transport of nuclear material, and has ratified the 2005 Amendment to the Convention. A more detailed discussion of Vietnam's intended civil nuclear program and its nuclear nonproliferation policies and practices, including its nuclear export policies and practices, is provided in the NPAS and in a classified annex to the NPAS submitted to you separately. As noted above, the Director of National Intelligence will provide an addendum to the NPAS containing a comprehensive analysis of Vietnam's export control system with respect to nuclear-related matters.

I have considered the views and recommendations of the interested departments and agencies in reviewing the proposed Agreement and have determined that its performance will promote, and will not constitute an unreasonable risk to, the common defense and security. Accordingly, I have approved the Agreement and authorized its execution and urge that the Congress give it favorable consideration.

This transmission shall constitute a submittal for purposes of both sections 123 b. and 123 d. of the Act. My Administration is prepared to begin immediately the consultations with the Senate Foreign Relations Committee and the House Foreign Affairs Committee as provided for in section 123 b. Upon completion of the 30 days of continuous session review provided for in section 123 b., the 60 days of continuous session review provided for in section 123 d. shall commence.

BARACK OBAMA.

THE WHITE HOUSE, *May 8, 2014.*

AGREEMENT FOR COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM CONCERNING PEACEFUL USES OF NUCLEAR ENERGY

The Government of the United States of America and the Government of the Socialist Republic of Vietnam,

MINDFUL of their respective rights and obligations under the 1968 Treaty on the Nonproliferation of Nuclear Weapons ("NPT") to which both the United States of America and the Socialist Republic of Vietnam are parties;

REAFFIRMING their commitment to ensuring that the international development and use of nuclear energy for peaceful purposes are carried out under arrangements that will to the maximum possible extent further the objectives of the NPT;

AFFIRMING their desire to promote universal adherence to the NPT;

AFFIRMING their support for the International Atomic Energy Agency ("IAEA") and its safeguards system, including the Additional Protocol (INFCIRC/540);

DESIRING to cooperate in the development of peaceful uses of nuclear energy;

MINDFUL that peaceful nuclear activities must be undertaken with a view to protecting the international environment from radioactive, chemical, and thermal contamination;

RECALLING the Memorandum of Understanding between them concerning Cooperation in the Nuclear Energy Fields, signed at Hanoi, the Socialist Republic of Vietnam on March 30, 2010;

AFFIRMING in particular the goal of pursuing the safe, secure, and environmentally sustainable development of civil nuclear energy for peaceful purposes and in a manner that supports nuclear nonproliferation and international safeguards;

AFFIRMING the intent of the Socialist Republic of Vietnam to rely on existing international markets for nuclear fuel services, rather than acquiring sensitive nuclear technologies, as a solution for peaceful, safe, and secure uses of civilian nuclear energy, and the intent of the United States to support these international markets in order to ensure reliable nuclear fuel supply for Vietnam;

HAVE AGREED AS FOLLOWS:

ARTICLE 1 - DEFINITIONS

For the purposes of this Agreement, including the Agreed Minute:

(A) "Agreed Minute" means the minute annexed to this Agreement, which is an integral part of this Agreement;

(B) "Byproduct material" means any radioactive material (except special fissionable material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special fissionable material;

(C) "Component" means a component part of equipment or other item, so designated by agreement of the Parties;

(D) "Conversion" means any of the normal operations in the nuclear fuel cycle, preceding fuel fabrication and excluding enrichment, by which uranium is transformed from one chemical form to another – for example, from UF6 to UO2 or from uranium oxide to metal;

(E) "Decommissioning" means the actions taken at the end of a facility's useful life to retire the facility from service in a manner that provides adequate protection for the health and safety of the decommissioning workers and the general public, and for the environment. These actions can range from closing down the facility and a minimal removal of nuclear material coupled with continuing maintenance and surveillance, to a complete removal of residual radioactivity in excess of levels acceptable for unrestricted use of the facility and its site;

(F) "Equipment" means any reactor, other than one designed or used primarily for the formation of plutonium or uranium 233, reactor pressure vessels (including closure heads), reactor calandrias, complete reactor control rod drive systems, reactor primary coolant pumps, online reactor fuel charging and discharging machines, or any other item so designated by agreement of the Parties;

(G) "High enriched uranium" means uranium enriched to twenty percent or greater in the isotope 235;

(H) "Information" means scientific, commercial or technical data or information in any form that is appropriately designated by agreement of the Parties or their competent authorities to be provided or exchanged under this Agreement;

(I) "Low enriched uranium" means uranium enriched to less than twenty percent in the isotope 235;

(J) "Major critical component" means any part or group of parts essential to the operation of a sensitive nuclear facility;

(K) "Material" means nuclear material, byproduct material, radioisotopes other than byproduct material, moderator material, or any other such substance so designated by agreement of the Parties;

(L) "Moderator material" means heavy water or graphite or beryllium of a purity suitable for use in a reactor to slow down high velocity neutrons and increase the likelihood of further fission, or any other such material so designated by agreement of the Parties;

(M) "Nuclear material" means source material or special fissionable material.

(N) "Parties" means the Government of the United States of America and the Government of the Socialist Republic of Vietnam;

(O) "Peaceful purposes" include the use of information, material, equipment and components in such fields as research, power generation, medicine, agriculture and industry but do not include use in, research on, or development of any nuclear explosive device, or any military purpose;

(P) "Person" means any individual or any entity subject to the jurisdiction of either Party but does not include the Parties to this Agreement;

(Q) "Reactor" means any apparatus, other than a nuclear weapon or other nuclear explosive device, in which a self-sustaining fission chain reaction is maintained by utilizing uranium, plutonium or thorium or any combination thereof;

(R) "Restricted Data" means all data concerning (1) design, manufacture or utilization of nuclear weapons, (2) the production of special fissionable material, or (3) the use of special fissionable material in the production of energy, but shall not include data of a Party that it has declassified or removed from the category of Restricted Data;

(S) "Sensitive nuclear facility" means any facility designed or used primarily for uranium enrichment, reprocessing of nuclear fuel, heavy water production, or fabrication of nuclear fuel containing plutonium;

(T) "Sensitive nuclear technology" means any information (including information incorporated in equipment or an important component) that is not in the public domain and that is important to the design, construction, fabrication, operation or maintenance of any sensitive nuclear facility, or any other such information that may be so designated by agreement of the Parties;

(U) "Source material" means (1) uranium, thorium, or any other material so designated by agreement of the Parties, or (2) ores containing one or more of the foregoing materials in such concentration as the Parties may agree from time to time;

(V) "Special fissionable material" means (1) plutonium, uranium 233, or uranium enriched in the isotope 235, or (2) any other material so designated by agreement of the Parties.

ARTICLE 2 - SCOPE OF COOPERATION

1. The Parties shall cooperate in the use of nuclear energy for peaceful purposes in accordance with the provisions of this Agreement and their applicable treaties, national laws, regulations and license requirements.

2. The Parties intend to cooperate in the following areas:

(A) Development of requirements for power reactors and fuel service arrangements for the Socialist Republic of Vietnam;

(B) Development of the Socialist Republic of Vietnam's civilian nuclear energy use in a manner that contributes to global efforts to prevent nuclear proliferation;

(C) Research, development and application of civilian nuclear power reactor technologies and spent fuel management technologies;

(D) Promotion of the establishment of a reliable source of nuclear fuel for future civilian light water nuclear reactors deployed in the Socialist Republic of Vietnam;

(E) Civilian nuclear energy training, human resource and infrastructure development, and appropriate application of civilian nuclear energy and related energy technology, in accordance with evolving IAEA guidance and standards on milestones for infrastructure development;

(F) Research and application of radioisotopes and radiation in industry, agriculture, medicine and the environment;

(G) Radiation protection and management of radioactive waste and spent fuel;

(H) Nuclear safety, security, safeguards and nonproliferation, including physical protection, export control and border security; and

(I) Other areas of cooperation as may be mutually determined by the Parties.

3. Cooperation under paragraph 2 may be undertaken in the following forms:

(A) Exchange of scientific and technical information and documentation;

(B) Exchange of training and personnel;

(C) Organization of symposia and seminars;

(D) Provision of relevant technical assistance and services;

(E) Joint research; and

(F) Other forms of cooperation as may be mutually determined by the Parties.

4. Transfer of information, material, equipment and components under this Agreement may be undertaken directly between the Parties or through authorized Persons. Such transfers shall be subject to this Agreement and to such additional terms and conditions as may be agreed by the Parties.

ARTICLE 3 - TRANSFER OF INFORMATION

1. Information concerning the use of nuclear energy for peaceful purposes may be transferred under this Agreement. Transfers of information may be accomplished through various means, including reports, data banks, computer programs, conferences, visits, and assignments of staff to facilities. Fields that may be covered may include, but shall not be limited to, the following:

(A) Research, development, design, construction, operation, maintenance and use of reactors, reactor experiments, and decommissioning;

(B) The use of material in physical and biological research, medicine, agriculture and industry;

(C) Fuel cycle studies of ways to meet future world-wide civil nuclear needs, including multilateral approaches to guaranteeing nuclear fuel supply and appropriate techniques for management of nuclear wastes;

(D) Safeguards and physical protection of material, equipment and components;

(E) Health, safety and environmental considerations related to the foregoing; and

(F) Assessing the role nuclear power may play in national energy plans.

2. This Agreement does not require the transfer of any information that the Parties are not permitted under their respective treaties, national laws and regulations to transfer.

3. Restricted Data and Sensitive Nuclear Technology shall not be transferred under this Agreement.

ARTICLE 4 - TRANSFER OF MATERIAL, EQUIPMENT AND COMPONENTS

1. Material, equipment and components may be transferred for applications consistent with this Agreement. Any special fissionable material transferred to the Socialist Republic of Vietnam under this Agreement shall be low enriched uranium, except as provided in paragraph 4. Sensitive nuclear facilities and major critical components thereof shall not be transferred under this Agreement.

2. Low enriched uranium may be transferred, including *inter alia* by sale or lease, for use as fuel in reactors and reactor experiments, for conversion or fabrication, or for such other purposes as may be agreed by the Parties.

3. The quantity of special fissionable material transferred under this Agreement shall not at any time be in excess of that quantity the Parties agree is necessary for any of the following purposes: use in the loading of reactors or in reactor experiments; the reliable, efficient and continuous operation of reactors or conduct of reactor experiments; the storage of special fissionable material necessary for the efficient and continuous operation of reactors or conduct of reactor experiments; the transfer of irradiated nuclear material for storage or disposition; and the accomplishment of such other purposes as may be agreed by the Parties.

4. Small quantities of special fissionable material may be transferred for use as samples, standards, detectors, targets or for such other purposes as the Parties may agree. Transfers pursuant to this paragraph shall not be subject to the quantity limitations in paragraph 3.

5. The Government of the United States of America shall endeavor to take such actions as are necessary and feasible to ensure a reliable supply of nuclear fuel to

the Socialist Republic of Vietnam, including the export of nuclear fuel on a timely basis during the period of this Agreement. The Government of the United States of America shall also give serious consideration to taking such actions as are feasible to assist the Government of the Socialist Republic of Vietnam in safe and secure management, storage, transport, and disposition of irradiated special fissionable material produced through the use of material or equipment transferred pursuant to this Agreement.

ARTICLE 5 - STORAGE AND RETRANSFERS

1. Plutonium and uranium 233 (except as contained in irradiated fuel elements), and high enriched uranium, transferred pursuant to this Agreement or used in or produced through the use of material or equipment so transferred shall only be stored in a facility to which the Parties agree.

2. Material, equipment and components transferred pursuant to this Agreement and any special fissionable material, other transuranic elements and tritium produced through the use of any such material or equipment shall not be transferred to unauthorized Persons or, unless the Parties agree, beyond the recipient Party's territorial jurisdiction.

3. In order to facilitate management of spent fuel, irradiated nuclear materials, or nuclear-related waste, material transferred or produced through the use of material, equipment and components transferred pursuant to this Agreement may be transferred to the United States of America if the Government of the United States of America designates a storage or disposition option. In this event, the Parties shall make appropriate implementing arrangements.

ARTICLE 6 - REPROCESSING, OTHER ALTERATION IN FORM OR CONTENT, AND ENRICHMENT

1. Material transferred pursuant to this Agreement and material used in or produced through the use of material or equipment so transferred shall not be reprocessed unless the Parties agree.

2. Plutonium, uranium 233, high enriched uranium and irradiated source or special fissionable material transferred pursuant to this Agreement or used in or produced through the use of material or equipment so transferred shall not be otherwise altered in form or content, except by irradiation or further irradiation, unless the Parties agree.

3. Uranium transferred pursuant to this Agreement or used in or produced through the use of any material or equipment so transferred shall not be enriched after transfer unless the Parties agree.

ARTICLE 7 - PHYSICAL PROTECTION

1. Adequate physical protection shall be maintained with respect to any material and equipment transferred pursuant to this Agreement and any special fissionable material used in or produced through the use of material or equipment so transferred.

2. To comply with the requirement in paragraph 1, each Party shall apply at a minimum measures in accordance with (i) levels of physical protection at least equivalent to the recommendations published in IAEA document INFCIRC/225/Rev.5 entitled "The Physical Protection of Nuclear Material and Nuclear Facilities" and in any subsequent revisions of that document accepted by the Parties, and (ii) the provisions of the 1980 Convention on the Physical Protection of Nuclear Material, as well as any amendments to the Convention that enter into force for both Parties.

3. The adequacy of physical protection measures maintained pursuant to this Article shall be subject to review and consultations by the Parties from time to time and whenever either Party is of the view that revised measures may be required to maintain adequate physical protection.

4. The Parties shall keep each other informed through diplomatic channels of those agencies or authorities having responsibility for ensuring that levels of physical protection for nuclear material in their territory or under their jurisdiction or control are adequately met and having responsibility for coordinating response and recovery operations in the event of unauthorized use or handling of material subject to this Article. The Parties shall inform each other through diplomatic channels, as well, of the designated points of contact within their national authorities to cooperate on matters of out-of-country transportation and other matters of mutual concern.

ARTICLE 8 - NO EXPLOSIVE OR MILITARY APPLICATION

Material, equipment and components transferred pursuant to this Agreement and material used in or produced through the use of any material, equipment or components so transferred shall not be used for any nuclear explosive device, for research on or development of any nuclear explosive device, or for any military purpose.

ARTICLE 9 - SAFEGUARDS

1. Cooperation under this Agreement shall require the application of IAEA safeguards with respect to all nuclear material in all nuclear activities within the territory of the Socialist Republic of Vietnam, under its jurisdiction or carried out under its control anywhere. Implementation of a Safeguards Agreement concluded pursuant to Article III (4) of the NPT shall be considered to fulfill this requirement.

2. Source material or special fissionable material transferred to the Socialist Republic of Vietnam pursuant to this Agreement and any source material or special fissionable material used in or produced through the use of material, equipment or components so transferred shall be subject to safeguards in accordance with the agreement between the Socialist Republic of Vietnam and the IAEA for the application of safeguards in connection with the NPT, signed on October 2, 1989, which entered into force on February 23, 1990, and the Additional Protocol thereto signed on August 10, 2007, which entered into force on September 17, 2012.

3. Source material or special fissionable material transferred to the United States of America pursuant to this Agreement and any source or special fissionable material used in or produced through the use of any material, equipment or components so transferred shall be subject to the agreement between the United States of America and the IAEA for the application of safeguards in the United States of America, signed on November 18, 1977, which entered into force on December 9, 1980, and the Additional Protocol thereto, which entered into force on January 6, 2009.

4. If either Party becomes aware of circumstances that demonstrate that the IAEA for any reason is not or will not be applying safeguards in accordance with the agreements with the IAEA referred to in paragraph 2 or paragraph 3, to ensure effective continuity of safeguards the Parties shall consult and immediately enter into arrangements with the IAEA or between themselves that conform with IAEA safeguards principles and procedures, that provide assurance equivalent to that intended to be secured by the system they replace, and that conform with the coverage required by paragraph 2 or paragraph 3.

5. Each Party shall take such measures as are necessary to maintain and facilitate the application of safeguards applicable to it provided for under this Article.

6. Each Party shall establish and maintain a system of accounting for and control of source material and special fissionable material transferred pursuant to this Agreement and source material and special fissionable material used in or

produced through the use of any material, equipment or components so transferred. The procedures for this system shall be comparable to those set forth in IAEA document INFCIRC/153 (Corrected), or in any revision of that document agreed to by the Parties.

7. Upon the request of either Party, the other Party shall report or permit the IAEA to report to the requesting Party on the status of all inventories of material subject to this Agreement.

ARTICLE 10 - MULTIPLE SUPPLIER CONTROLS

If any agreement between either Party and another nation or group of nations provides such other nation or group of nations rights equivalent to any or all of those set forth under Article 5 or Article 6 with respect to material, equipment or components subject to this Agreement, the Parties may, upon request of either of them, agree that the implementation of any such rights will be accomplished by such other nation or group of nations.

ARTICLE 11 - CESSATION OF COOPERATION AND RIGHT OF RETURN

1. If either Party at any time following entry into force of this Agreement:

(A) does not comply with the provisions of Article 5, 6, 7, 8, or 9; or

(B) terminates, abrogates or materially violates a safeguards agreement with the IAEA;

the other Party shall have the rights to cease further cooperation under this Agreement and to require the return of any material, equipment and components transferred under this Agreement and any special fissionable material produced through their use.

2. If the Socialist Republic of Vietnam following entry into force of this Agreement detonates a nuclear explosive device, the United States of America shall have the same rights as specified in paragraph 1.

3. If the United States of America detonates a nuclear explosive device using material, equipment or components transferred pursuant to this Agreement or nuclear material used in or produced through the use of such items, the Government of the Socialist Republic of Vietnam shall have the same rights as specified in paragraph 1.

4. In determining whether to exercise its rights under paragraph 1 of this Article based on a "material violation," a Party shall consider whether the facts giving rise to the right to take such action in accordance with paragraph 1 were caused deliberately. In the event that it finds such material violation not to be deliberate, and to the extent which it judges that such material violation can be rectified, the non-breaching Party shall endeavor, subject to its national legislation and regulations, to afford the breaching Party an opportunity to cure the material violation within a reasonable period.

5. If either Party exercises its rights under this Article to require the return of any material, equipment or components, it shall promptly, after removal from the territory of the other Party, reimburse the other Party for the fair market value of such material, equipment or components.

ARTICLE 12 - CONSULTATIONS, REVIEW AND ENVIRONMENTAL PROTECTION

1. The Parties undertake to consult at the request of either Party regarding the implementation of this Agreement and the development of further cooperation in the field of peaceful uses of nuclear energy.

2. The Parties shall consult, with regard to activities under this Agreement, to identify the international environmental implications arising from such activities and shall cooperate in protecting the international environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities under this Agreement and in related matters of health and safety.

ARTICLE 13 - IMPLEMENTATION

1. The terms of this Agreement shall be implemented in good faith and with due regard to the legitimate commercial interests, whether international or domestic, of either Party. This Agreement shall be implemented in a manner designed:

(A) to avoid hampering or delaying the nuclear activities in the territory of either Party;

(B) to avoid interference in such activities;

(C) to be consistent with prudent management practices required for the economic and safe conduct of such activities; and

(D) to take full account of the long-term requirements of the Parties' nuclear energy programs.

2. The provisions of this Agreement shall not be used for the purpose of securing unfair commercial or industrial advantages, or of restricting trade to the disadvantage of persons and undertakings of either Party or hampering their commercial or industrial interests, whether international or domestic.

ARTICLE 14 - SETTLEMENT OF DISPUTES

The Parties shall address any dispute concerning the interpretation or application of this Agreement through negotiation or any other mutually agreed upon peaceful means of dispute settlement.

ARTICLE 15 - ADMINISTRATIVE ARRANGEMENT

1. Upon request by either Party, the appropriate authorities of the Parties shall, by mutual consent, establish an Administrative Arrangement in order to provide for the effective implementation of the provisions of this Agreement.

2. The principles of fungibility and equivalence shall apply to nuclear material and moderator material subject to this Agreement. Detailed provisions for applying these principles shall be set forth in such an Administrative Arrangement.

3. The Administrative Arrangement established pursuant to this Article may be modified by mutual consent of the appropriate authorities of the Parties.

ARTICLE 16 - ENTRY INTO FORCE, AMENDMENT, AND DURATION

1. This Agreement shall enter into force on the date of the later note of an exchange of diplomatic notes between the Parties informing each other that they have completed all applicable requirements for entry into force.

2. This Agreement may be amended by written agreement of the Parties. Amendments to this Agreement shall enter into force on the date of the later note of an exchange of diplomatic notes between the Parties informing each other that they have completed all applicable requirements for entry into force.

3. This Agreement shall remain in force for a period of 30 years and shall continue in force thereafter for additional periods of five years each. Either Party may, by giving six months written notice to the other Party, terminate this Agreement at the end of the initial 30-year period or at the end of any subsequent five-year period. Additionally, this Agreement may be terminated at any time by either Party on one year's written notice to the other Party.

4. Notwithstanding the termination or expiration of this Agreement or any cessation of cooperation hereunder for any reason, Articles 5, 6, 7, 8, 9, and 11 and the Agreed Minute shall continue in effect so long as any material, equipment or components subject to these articles remains in the territory of the Party concerned or under its jurisdiction or control anywhere, or until such time as the Parties agree that such material, equipment or components are no longer usable for any nuclear activity relevant from the point of view of safeguards.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Agreement.

DONE at Hanoi, this 6th day of May 2014, in duplicate, in the English and Vietnamese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM:

AGREED MINUTE

During the negotiation of the Agreement for Cooperation between the Government of the United States of America and the Government of the Socialist Republic of Vietnam Concerning Peaceful Uses of Nuclear Energy ("the Agreement") signed today, the following understandings, which shall be an integral part of the Agreement, were reached.

1. Coverage of Agreement

a. Material, equipment and components transferred from the territory of one Party to the territory of the other Party, whether directly or through a third country, shall be regarded as having been transferred pursuant to the Agreement only upon confirmation, by the appropriate government authority of the recipient Party to the appropriate government authority of the supplier Party, that such material, equipment or components shall be subject to the Agreement.

b. With respect to the definition of "Restricted Data" in subparagraph (R) of Article 1 of the Agreement, it is the understanding of the Parties that all information on the use of special fissionable material in the production of energy from standard civilian reactors has been declassified or removed from the category of "Restricted Data."

c. For the purposes of implementing the rights specified in Article 5 and Article 6 of the Agreement with respect to special fissionable material produced through the use of nuclear material transferred pursuant to the Agreement and not used in or produced through the use of equipment transferred pursuant to the Agreement, such rights shall in practice be applied to that proportion of special fissionable material produced that represents the ratio of transferred material used in the production of the special fissionable material to the total amount of material so used, and similarly for subsequent generations.

d. Material, nuclear material, equipment and components subject to this Agreement shall no longer be subject to this Agreement if:

(1) Such items have been transferred beyond the territory of the receiving Party in accordance with the relevant provisions of this Agreement and are no longer under its jurisdiction or control anywhere;

(2) In the case of nuclear material, if the Parties agree, taking into account among other factors an IAEA determination, if any, in accordance with the provisions for the termination of safeguards in the relevant agreement referred to in paragraphs 2

or 3 of Article 9, whichever is applicable, that the nuclear material is no longer usable for any nuclear activity relevant from the point of view of safeguards; or

(3) In the case of material (other than nuclear material), equipment and components, it is agreed by the Parties.

2. Safeguards

a. If either Party becomes aware of circumstances referred to in paragraph 4 of Article 9 of the Agreement, either Party (hereinafter "the safeguarding Party") shall have the rights listed below, which rights shall be suspended if both Parties agree that the need to exercise such rights is being satisfied by the application of IAEA safeguards under arrangements pursuant to paragraph 4 of Article 9 of the Agreement:

(1) To review in a timely fashion the design of any equipment transferred pursuant to the Agreement, or of any facility that is to use, fabricate, process, or store any material so transferred or any special fissionable material used in or produced through the use of such material or equipment;

(2) To require the maintenance and production of records and of relevant reports for the purpose of assisting in ensuring accountability for material transferred pursuant to the Agreement and any source material or special fissionable material used in or produced through the use of any material, equipment or components so transferred; and

(3) To designate personnel acceptable to the other Party (hereinafter "the safeguarded Party"), who shall have access to all places and data necessary to account for the material referred to in paragraph 2, to inspect any equipment or facility referred to in paragraph 1, and to install any devices and make such independent measurements as may be deemed necessary to account for such material. The safeguarded Party shall not unreasonably withhold its acceptance of personnel designated by the safeguarding Party under this paragraph. Such personnel shall, if either Party so requests, be accompanied by personnel designated by the safeguarded Party.

b. The simultaneous application of safeguards with respect to one Party by the IAEA and by the other Party is not intended.

c. Upon the request of either Party, the other Party will authorize the IAEA to make available to the Government of the requesting Party information on the implementation of the applicable safeguards agreement with the IAEA within the scope of cooperation under this Agreement.

d. To the extent consistent with its applicable national legislation and regulations, each Party shall ensure that all information provided under this Section 2 of the Agreed Minute by the other Party or the IAEA will not be publicly disclosed, and will be accorded appropriate protections with a view to providing the same level of protection accorded to such information by the other Party or the IAEA. The Parties shall consult regarding the appropriate protections for such information.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM:

[Presidential Determination No. 2014–08]

THE WHITE HOUSE,
Washington, February 24, 2014.

Memorandum for the Secretary of State, the Secretary of Energy.

SUBJECT: Proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Socialist Republic of Vietnam Concerning Peaceful Uses of Nuclear Energy.

I have considered the proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Socialist Republic of Vietnam Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Agreement and authorize the Secretary of State to arrange for its execution.

The Secretary of State is authorized to publish this determination in the *Federal Register*.

BARACK OBAMA.

NUCLEAR PROLIFERATION ASSESSMENT STATEMENT

Pursuant to Section 123 a. of the Atomic Energy Act of 1954, as Amended, with Respect to the Proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Socialist Republic of Vietnam Concerning Peaceful Uses of Nuclear Energy

INTRODUCTION

This Nuclear Proliferation Assessment Statement ("NPAS") relates to the proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Socialist Republic of Vietnam Concerning Peaceful Uses of Nuclear Energy (the "Agreement"). The Agreement is being submitted to the President jointly by the Secretary of State and Secretary of Energy for his approval and authorization for signature.

Section 123 a. of the Atomic Energy Act, as amended (the "Atomic Energy Act" or "Act"), provides that an NPAS be submitted by the Secretary of State to the President on each new or amended agreement for cooperation concluded pursuant to that section. Pursuant to Section 123 a., the NPAS must analyze the consistency of the text of the proposed agreement with all the requirements of the Act, with specific attention to whether the proposed agreement is consistent with each of the criteria set forth in Section 123.a. The NPAS must also address the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose.

With this statutory mandate in mind, this NPAS: (a) provides background information on Vietnam's nonproliferation policies and its civil nuclear program and aspirations (Part I); (b) describes the nature and scope of the cooperation contemplated in the proposed Agreement (Part II); (c) reviews the applicable substantive requirements of the Act and the Nuclear Non-Proliferation Act of 1978 (NNPA) and details how they are met by the proposed Agreement (Part III); and (d) sets forth the net assessment, conclusions, views, and recommendations of the Department of State as contemplated by section 123 a. of the Act (Part IV).

I. NUCLEAR PROGRAM AND NONPROLIFERATION POLICIES OF THE SOCIALIST REPUBLIC OF VIETNAM

Overview

Vietnam has been carefully building the infrastructure necessary to operate a safe and secure civil nuclear power program. In January 2006, the Vietnamese government approved the Strategy for Peaceful Utilization of Atomic Energy up to the year 2020. This strategy included three main objectives:

- To enhance applications of radiation and radioisotopes in industry, agriculture, health care, environmental protection, etc.
- To construct and put the first nuclear power plant into safe operation in 2020.
- To build up national infrastructure for safe management of radioactive materials and nuclear power plants.

This was followed by approval of a master plan for implementation of the strategy in July 2007, completion of the pre-feasibility study for the first nuclear power plant, and approval of the first nuclear power plant project plan by the National Assembly in 2009. An updated Master Plan for Peaceful Utilization of Atomic Energy up to 2020 was approved June 2010; the Direction for Nuclear Power Plant (NPP) Development Plan up to 2030 was approved June 2010; and the National Master Plan for Power Development for 2011-2020 with the Vision to 2030 was approved July 2011.

In May 2013, Prime Minister Nguyen Tan Dung announced that the government would set up a National Council for Atomic Energy Development, tasked with identifying strategies and priorities for the development of nuclear energy in the country.

Vietnam has plans to have six reactors (6,000 MW) in operation by 2025 and to develop a total of ten reactors (10,700 MW) by 2030. Vietnam has entered into agreements for cooperation on peaceful uses of nuclear energy with Argentina, Canada, China, France, India, Japan, Russia, and South Korea. Vietnam's Ministry of Industry and Trade (MOIT) signed an agreement October 2010 with the Russian State Atomic Energy Corporation "Rosatom" for the provision of two pressurized water reactors (total of 2,000 MW) at Phuoc Dinh in Ninh Thuan province. Vietnam PM Nguyen Tan Dung and Japanese PM Naoto Kan released a Joint Statement October 2010, announcing that Vietnam had chosen Japan to

supply two additional reactors (total 2,000 MW) at Vinh Hai in Ninh Thuan province. Feasibility studies are currently being undertaken for both contracts in advance of selecting specific reactor designs for these first four power reactors. (The planned construction start date for the Russian reactors has been pushed back three years to 2017.) In 2012, Vietnam also signed an agreement with the Republic of South Korea to initiate a joint preliminary feasibility study, which commenced in June 2013.

Nonproliferation Credentials

Under the Atomic Energy Law (No. 18/2008/QH12) ("Atomic Energy Law"), Vietnam has prohibited researching, developing, manufacturing, trading in, transporting, transferring, storing, using, or threatening to use nuclear or radiological weapons.

Vietnam has signed and ratified or acceded to and/or brought into force the following key nonproliferation treaties and instruments:

- Treaty on the Non-Proliferation of Nuclear Weapons: Acceded June 14, 1982
- IAEA Safeguards Agreement (published as INFCIRC/376, March 1990): Signed October 2, 1989; in force February 23, 1990
- The Additional Protocol to its Safeguards Agreement (published as INFCIRC/376 Add.1, September 26, 2012: Signed August 10, 2007; in force September 17, 2012
- Convention on the Physical Protection of Nuclear Material: instrument of accession deposited October 4, 2012; in force November 3, 2012
- Amendment to the Convention on the Physical Protection of Nuclear Material: instrument of ratification deposited November 3, 2012
- Comprehensive Nuclear Test Ban Treaty: Signed September 24, 1996; ratified March 10, 2006
- Treaty of Bangkok (Southeast Asian Nuclear-Weapon-Free Zone Treaty): Signed December 15, 1995; ratified November 26, 1996

In addition, Vietnam has committed itself to conclude the International Convention for the Suppression of Acts of Nuclear Terrorism.

Vietnam additionally has demonstrated its commitment to prevent nuclear terrorism by its participation in the Global Initiative to Combat Nuclear Terrorism

(GICNT) and in the Nuclear Security Summit (NSS) process. Prime Minister Nguyen Tan Dung participated in the first NSS in Washington, DC, in 2010, and the second NSS in Seoul, South Korea, in 2012. As pledged at the April 2010 Nuclear Security Summit, Vietnam completed conversion of the Dalat research reactor from utilizing highly-enriched uranium (HEU) as fuel to utilizing low-enriched uranium (LEU) in 2011. Its remaining HEU fresh fuel (4.3 kg) was returned to Russia in 2007 and all the HEU spent fuel (11 kg) was returned to Russia in 2013, rendering Vietnam essentially free of any weapon-usable nuclear materials.

In addition to the Dalat commitment, Vietnam fulfilled its 2010 NSS commitments to endorse the GICNT and to ratify the Convention on the Physical Protection of Nuclear Material and its 2005 Amendment. Vietnam has not yet ratified the International Convention for the Suppression of Acts of Nuclear Terrorism, but has informed the U.S. Embassy of its intention to do so at the earliest opportunity. Vietnam and South Korea announced at the 2012 NSS that the two countries are working on a pilot project to establish within Vietnam a system to track radiological materials using GPS technology in cooperation with the IAEA. The project will contribute to securing and preventing the theft of radiological materials.

Following signature of a Memorandum of Understanding between the Department of Energy of the United States of America and the Ministry of Finance of the Socialist Republic of Vietnam Concerning the Cooperation to Prevent the Illicit Trafficking in Nuclear and Other Radioactive Material on July 2, 2010, Vietnam and the United States have begun cooperative projects under the Department of Energy's Second Line of Defense program to deter, detect, and interdict illicit smuggling of nuclear and other radioactive material.

The Department of Energy's International Nuclear Safeguards and Engagement Program has partnered with Vietnam since 2004. Vietnam is an active partner on nuclear infrastructure development collaboration, including activities such as radiation protection and health physics, research reactor operations, environmental radiological surveillance, radioactive waste management, implementation of the Additional Protocol, and development of State Systems of Accounting for and Control (SSAC) of nuclear material.

Vietnam has been a strong advocate for nonproliferation through the United Nations. During Vietnam's tenure on the United Nations Security Council in 2008-2009, Vietnam supported measures to increase sanctions on Iran (UNSCR

1803) and North Korea (UNSCR 1874), extend the mandate of the UNSCR 1540 Committee (UNSCR 1810), and support nuclear nonproliferation and disarmament (UNSCR 1887). In September 2010, Vietnam, in partnership with the United Nations Office for Disarmament Affairs, hosted a workshop on implementing UNSCR 1540 for countries in Southeast Asia.

Vietnam has established under its Atomic Energy Law a legal regime for radioactive materials and nuclear equipment that are subject to import and export control procedures.

Vietnam has been working with the U.S. Export Control and Related Border Security Program (EXBS) since 2003. The bulk of EXBS assistance to Vietnam to date has focused on Commodity Identification Training, industry/enterprise outreach, and maritime security activities. As Vietnam currently lacks a comprehensive strategic trade management law, the primary focus of near-term EXBS work will be assisting Vietnam in developing the legal and regulatory framework for managing strategic trade, including drafting a strategic trade law, while continuing to develop capacity for enforcement at seaports and borders.

The National Nuclear Security Administration (NNSA) conducted an International Consequence Management training course in Hanoi November 2013 as part of Vietnam's preparation for building a nuclear power plant. In addition, NNSA is assisting Vietnam to set up an emergency operations center and graphic information system to assist with sharing information during an emergency.

Nuclear Science and Technology Base

Vietnam has been working closely with the IAEA and international partners to develop the technical expertise needed to operate a safe and secure nuclear power program. Recognizing the need for a technically trained domestic workforce, Vietnam in 2010 approved the Master Plan on Training and Developing of Human Resources in the Field of Atomic Energy up to 2020 (Prime Minister Decision No. 1558/QD-TTg) (the "Plan"). Under the plan, Vietnam is upgrading nuclear programs at six universities and developing a Nuclear Science and Technology Center. The government is also providing funds to send Vietnamese students, researchers, and managers abroad for training. The plan aims to produce a total of 2,400 engineers and 350 MA and PhD specialists in nuclear power by 2020. In 2011, Vietnam set up a State Steering Committee to direct the implementation of the plan. Vietnamese university graduates are currently training in Russia and Japan to become nuclear technicians.

In 2008, the Vietnam Agency for Radiation and Nuclear Safety (VARANS) signed a cooperation agreement with the U.S. Nuclear Regulatory Commission to share technical information on nuclear energy as well as exchange information on regulations, environmental impacts, and safety of nuclear sites. This agreement was extended for another five years in May 2013. Over the past ten years, VARANS has rapidly expanded its staff to over ninety people, including scientists and technical specialists.

Vietnam operates one research reactor (500 kW; VVR-M, IVV-9) at the Institute of Nuclear Research in Dalat. The original reactor, a TRIGA Mark II design (250 kW) provided by General Atomics, became operational in 1963. From 1968 to 1975, the reactor was in extended shutdown. In 1974-1975, the U.S.-origin HEU nuclear fuel (approximately 13 kg) was removed and returned to the United States and the reactor was decommissioned. Vietnam reconstructed the reactor in the 1980s with the assistance of the Union of Soviet Socialist Republics (USSR) and the reactor became operational in 1983. According to the Vietnam Atomic Energy Commission, the reactor has been operating for the purposes of radioisotope production, neutron activation analysis, fundamental and applied research, and manpower training.

Vietnam is negotiating a contract with Russian Atomstroyexport for the provision of an additional research reactor for the Vietnamese Nuclear Science and Technology Center. (No final decision has been made for the location of this center.)

Nuclear Fuel Cycle

Vietnam has affirmed that it does not intend to seek to acquire sensitive fuel cycle capabilities but instead will rely upon the international market. This political commitment not to pursue enrichment and reprocessing was first included in the Memorandum of Understanding between the Socialist Republic of Vietnam and the United States of America Concerning Cooperation in the Nuclear Energy Field, signed in Hanoi on March 30, 2010 (the "MOU"). In the MOU, Vietnam affirmed its intent "to rely on existing international markets for nuclear fuel services, rather than acquiring sensitive nuclear technologies, as a solution for peaceful, safe and secure uses of civilian nuclear energy ...." This commitment has been reaffirmed in the preamble of the proposed Agreement.

Nuclear Regulations and Statutes

Vietnam passed an Atomic Energy Law in June 2008, which took effect January 1, 2009. Key provisions address:

- Establishment of the national nuclear regulatory authority
- Licensing and permitting regime
- Enforcement, assessment, and inspection
- Security and safeguards
- Physical protection and safety
- Control over orphan sources
- Emergency preparedness and response
- Safe transport of radioactive material
- Import and export controls
- Waste management and spent fuel management
- Decommissioning
- Civil liability for nuclear damage
- Criminal and civil offences and penalties
- Insurance

In June 2010, Prime Minister Nguyen Tan Dung signed Decision No. 45/2010/QD-TTg, which provides regulations on nuclear control in support of the Atomic Energy Law. Vietnam is in the process of further updating its Atomic Energy Law.

Vietnam acceded to both the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency on October 30, 1987. Vietnam acceded to the Convention on Nuclear Safety on July 15, 2010, and Vietnam deposited its instrument of ratification for the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management with the IAEA on October 9, 2013. It came into force for Vietnam on January 7, 2014.

Vietnam is currently considering whether to accede to the Vienna Convention on Civil Liability for Nuclear Damage and whether to ratify the Convention on Supplementary Compensation for Nuclear Damage.

II. NATURE AND SCOPE OF THE COOPERATION CONTEMPLATED BY THE PROPOSED AGREEMENT

Article 2.2 of the proposed Agreement describes in general terms the kinds of cooperative activities envisaged. These include:

- Development of requirements for power reactors and fuel service arrangements for the Socialist Republic of Vietnam.
- Development of the Socialist Republic of Vietnam's civilian nuclear energy use in a manner that contributes to global efforts to prevent nuclear proliferation.
- Research, development, and application of civilian nuclear power reactor technologies and spent fuel management technologies.
- Promotion of the establishment of a reliable source of nuclear fuel for future civilian light water nuclear reactors deployed in the Socialist Republic of Vietnam.
- Civilian nuclear energy training, human resource and infrastructure development, and appropriate application of civilian nuclear energy and related energy technology, in accordance with evolving IAEA guidance and standards on milestones for infrastructure development.
- Research and application of radioisotopes and radiation in industry, agriculture, medicine, and the environment.
- Radiation protection and management of radioactive waste and spent fuel.
- Nuclear safety, security, safeguards, and nonproliferation, including physical protection, export control, and border security.
- Other areas of cooperation as may be mutually determined by the Parties.

Article 3.1 of the proposed Agreement further specifies the types of information concerning the peaceful uses of nuclear energy that may be transferred. Fields that may be covered include the following:

- Research, development, design, construction, operation, maintenance, and use of reactors, reactor experiments, and decommissioning.

- The use of material in physical and biological research, medicine, agriculture, and industry.
- Fuel cycle studies of ways to meet future world-wide civil nuclear needs, including multilateral approaches to guaranteeing nuclear fuel supply and appropriate techniques for management of nuclear wastes.
- Safeguards and physical protection of material, equipment, and components.
- Health, safety, and environmental considerations related to the foregoing.
- Assessing the role nuclear power may play in national energy plans.

The Agreement states that restricted data, sensitive nuclear technology, sensitive nuclear facilities, or major critical components of such facilities shall not be transferred under the Agreement (Articles 3.3 and 4.1).

Transfers of special fissionable material to Vietnam under the Agreement shall be low-enriched uranium, except small quantities for use as samples, standards, detectors, targets, or for other agreed purposes (Articles 4.1 and 4.4). Any such transfers of low-enriched uranium may not be in excess of the quantity that the Parties agree is necessary for the activities envisaged (Article 4.3).

The Agreed Minute, under "Coverage of Agreement," provides that material, equipment, and components transferred from the territory of one Party to the territory of the other Party, either directly or through a third country, shall be regarded as having been transferred pursuant to the Agreement only upon confirmation by the recipient Party that such items will be subject to the Agreement.

The proposed Agreement will have a term of 30 years from the date of its entry into force and shall continue thereafter for additional periods of five years. Either Party may, by giving six months written notice to the other Party, terminate this Agreement at the end of the initial 30 year period or at the end of any subsequent five-year period. Additionally, the proposed Agreement may be terminated at any time by either Party on one year's written notice to the other Party (Article 16.3). In the event of termination of the Agreement, key nonproliferation conditions and controls provided for in the Agreement will continue in effect as long as any material, equipment, or components subject to the Agreement remains in the territory of the Party concerned or under its jurisdiction or control anywhere, or until such time as the Parties agree that such material,

equipment, or components are no longer usable for any nuclear activity relevant from the point of view of safeguards (Article 16.4).

III. SUBSTANTIVE CONDITIONS

The proposed Agreement meets the applicable requirements of the Atomic Energy Act and the NNPA. Section 123 of the Act, as amended by the NNPA, sets forth certain substantive requirements that must be met in agreements for cooperation. Sections 402 and 407 of the NNPA set forth supplementary requirements. The provisions contained in the proposed Agreement satisfy these legal requirements as follows:

(1) Application of Safeguards: Section 123(a)(1) of the Act requires a guaranty from the cooperating party that safeguards in perpetuity will be maintained with respect to all nuclear materials and equipment transferred pursuant to an agreement for cooperation and with respect to all special nuclear material used in or produced through the use of such transferred nuclear materials and equipment, so long as the material or equipment remains under the jurisdiction or control of the cooperating party, irrespective of the duration of the other provisions of the agreement or whether the agreement is terminated or suspended for any reason.

This requirement is satisfied by Articles 9 and 16 of the proposed Agreement. Article 9.2 stipulates that source or special nuclear material (referred to in this Agreement as "special fissionable material") transferred to Vietnam pursuant to this Agreement and any other nuclear material used in or produced through the use of any material (which under the Agreement includes source material, special nuclear material, byproduct material, radioisotopes other than byproduct material, moderator material, or any other such substance so designated by agreement of the Parties), equipment, or components transferred shall be subject, to the extent applicable, to the Agreement between Vietnam and the IAEA for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons ("NPT"), signed on October 2, 1989, which entered into force on February 23, 1990, and an Additional Protocol thereto signed on August 10, 2007, which entered into force on September 17, 2012. Article 9.4 provides for "back-up" safeguards in the event the IAEA safeguards agreement with Vietnam is not being implemented. Article 9 is one of the articles of the Agreement that, pursuant to Article 16.4, continues in effect so long as any material, equipment, or components subject thereto remains in the territory of the United States of America or Vietnam or under the jurisdiction or control of either

Party to the Agreement anywhere, unless that item is no longer usable for any nuclear activity relevant from the point of view of safeguards.

(2) Full-Scope Safeguards: The requirement for full-scope safeguards as a condition of cooperation mandated by section 123 a.(2) is met by Article 9.1 of the proposed Agreement.

(3) Peaceful Use: The requirement of section 123 a.(3) of the Act for a guaranty against explosive or military uses of nuclear materials and equipment transferred and special nuclear material produced through the use of such items is met by Article 8 of the proposed Agreement. It is not necessary to include a peaceful uses guarantee with respect to sensitive nuclear technology transferred under the Agreement or special nuclear materials (referred to in the proposed Agreement as "special fissionable materials") produced through the use of sensitive nuclear technology transferred, as would otherwise be required by section 123 a.(3), because Article 3.3 of the proposed Agreement provides that sensitive nuclear technology shall not be transferred under the Agreement.

(4) Right of Return: The requirement in section 123 a.(4) of the Act that, in the event of a nuclear detonation by a non-nuclear weapon state cooperating party, the United States has a right to the return of any nuclear materials and equipment transferred pursuant to an agreement for cooperation and any special nuclear material produced through the use of such transferred items is met by Articles 11.1 and 11.2 of the proposed Agreement. This right would be triggered if Vietnam should detonate a nuclear explosive device, does not comply with the provisions of Articles 5, 6, 7, 8 or 9 of the Agreement, or terminates, abrogates, or materially violates its IAEA safeguards agreement.

Article 11.4 of the proposed Agreement requires that a Party, in determining whether to exercise its rights under Article 11.1 based on a "material violation," shall consider whether the facts giving rise to the right to take such action in accordance with Article 11.1 were caused deliberately. In the event that Party finds such material violation not to be deliberate, and to the extent that it judges that such material violation can be rectified, the non-breaching Party is obligated to endeavor, subject to its national legislation and regulations, to afford the breaching Party an opportunity to cure the material violation within a reasonable period.

(5) Retransfer Consent: The requirement of Section 123 a.(5) of the Act for a guaranty by the cooperating party that "any material or any Restricted Data .and

any production or utilization facility transferred pursuant to the agreement or any special nuclear material produced through the use of any such facility or material" will not be transferred to unauthorized persons or beyond the jurisdiction or control of the cooperating party without prior U.S. consent is met by Article 5.2 of the proposed Agreement. A retransfer consent right over Restricted Data ("RD") is not provided because RD transfers are prohibited under Article 3.3 of the Agreement.

(6) Physical Security: The requirement of Section 123 a.(6) of the Act for a guaranty that adequate physical security will be maintained with respect to any nuclear material transferred pursuant to an agreement of cooperation and any special nuclear material used in or produced through the use of nuclear material, production facility, or utilization facility transferred pursuant to such agreement is met by Article 7 of the proposed Agreement.

(7) Enrichment/Reprocessing/Alteration Consent Right: The requirement of section 123 a.(7) of the Act for a guaranty that "no material transferred pursuant to the agreement for cooperation and no material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to the agreement will be reprocessed, enriched or (in the case of plutonium, uranium 233, or uranium enriched to greater than 20 per cent in the isotope 235, or other nuclear materials which have been irradiated) otherwise altered in form or content without the prior approval of the United States," is met by Article 6 of the proposed Agreement. Article 6.1 provides that "(m)aterial transferred pursuant to the Agreement and material used in or produced through the use of material or equipment so transferred shall not be reprocessed unless the Parties agree." Article 6.2 further specifies that plutonium, uranium 233, high enriched uranium, and irradiated source material or special fissionable material transferred pursuant to the Agreement or used in or produced through the use of material or equipment so transferred shall not be altered in form or content, except by irradiation or further irradiation, unless the Parties agree. Article 6.3 specifies that uranium transferred pursuant to the Agreement or used in or produced through the use of any material or equipment so transferred shall not be enriched after transfer unless the Parties agree.

Article 6 also satisfies Section 402(a) of the NNPA, which states that, except as specifically provided in any agreement for cooperation, no source or special nuclear material exported from the United States after the date of the NNPA may be enriched after export without the prior approval of the United States for such enrichment.

(8) Storage Consent Right: The requirement of Section 123 a.(8) of the Act for a guaranty of a right of prior U.S. approval over facilities for the storage of specified nuclear materials is met by Article 5.1 of the proposed Agreement.

(9) Sensitive Nuclear Technology: The requirement of section 123 a.(9) of the Act pertains to situations that may result when sensitive nuclear technology is transferred pursuant to a Section 123 agreement for cooperation. Article 3.3 of the proposed Agreement provides that sensitive nuclear technology shall not be transferred under the Agreement, and Article 4.1 provides that sensitive nuclear facilities and major critical components thereof shall not be transferred under the proposed Agreement. Accordingly, the requirement in Section 123 a.(9) is not relevant to the proposed Agreement, and the requirement in Section 402(b) of the NNPA precluding the transfer of major critical components of facilities for uranium enrichment, nuclear fuel reprocessing, or heavy water production unless an agreement for cooperation "specifically designates such components as items to be exported pursuant to [such] agreement" is also satisfied.

Environmental: Article 12.2 of the proposed Agreement requires the Parties to consult, with regard to activities under the Agreement, to identify the international environmental implications arising from such activities and to cooperate in protecting the international environment from radioactive, chemical, or thermal contamination arising from peaceful nuclear activities under the proposed Agreement and in related matters of health and safety, thereby satisfying the requirements of section 407 of the NNPA.

Article 10 of the proposed Agreement is not required by the Act or the NNPA, but it is consistent with these laws. It provides that the parties may, by mutual agreement, arrange for a third party to exercise U.S. consent rights with respect to particular items subject to the agreement if the third party already enjoys the same consent rights over those items. All applicable provisions of U.S. law, including Section 131 of the Act governing subsequent arrangements, would have to be satisfied. Similar provisions have been included in all post-NNPA agreements for cooperation, although they have never been applied.

Proportionality: For the purpose of implementing rights specified in Articles 5 and 6 of the proposed Agreement, "produced" special nuclear material is defined in terms of proportionality in the Agreed Minute to the Agreement. Thus, if U.S. nuclear material is used in a non-U.S. reactor, the special nuclear material produced will be attributed to the U.S. in the proportion of the U.S. nuclear material to the total amount of nuclear material used, and similarly for subsequent

generations. It has been our consistent view that Sections 123 and 127 of the Act allow this concept of proportionality to be used in determining the reasonable application of U.S. consent rights. We are aware of no course of practice or legislative history to the contrary. Agreements negotiated since the enactment of the NNPA in 1978 generally contain a similar proportionality provision.

In sum, the proposed Agreement satisfies all the substantive requirements specified for agreements for cooperation by the Act and the NNPA.

IV. CONCLUSION

Entry into force of the proposed Agreement will put in place a framework for mutually beneficial civil nuclear cooperation between the United States and Vietnam, and provide a foundation for continued collaboration on nuclear nonproliferation goals.

On the basis of the analysis in this NPAS and all pertinent information of which it is aware, the Department of State has arrived at the following assessment, conclusions, views, and recommendations:

1. The safeguards and other control mechanisms and the peaceful use assurances in the proposed Agreement are adequate to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose.

2. The Agreement meets all the legal requirements of the Act and the NNPA.

3. Execution of the proposed Agreement would be compatible with the nonproliferation program, policy, and objectives of the United States.

4. Therefore, it is recommended that the President approve and authorize the execution of the proposed Agreement; and that the President determine that the performance of the proposed Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security.

201400635

THE SECRETARY OF STATE
WASHINGTON

February 18, 2014

UNCLASSIFIED

MEMORANDUM FOR THE PRESIDENT

FROM: John F. Kerry
Secretary of State

Ernest Moniz
Secretary of Energy

SUBJECT: Proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Socialist Republic of Vietnam Concerning Peaceful Uses of Nuclear Energy

The United States and Vietnam have completed negotiations of a proposed Agreement for Cooperation Between the Government of the United States of America and the Government of the Socialist Republic of Vietnam Concerning Peaceful Uses of Nuclear Energy (the "Agreement"). If you authorize execution of the Agreement, it will be signed by representatives of the United States and Vietnam. After signature, in accordance with Sections 123 b. and d. of the Atomic Energy Act of 1954, as amended (the "Act"), the Agreement must be submitted to both houses of Congress for a review period of 90 days of continuous session. Unless a joint resolution of disapproval is enacted, the Agreement may be brought into force upon completion of the review period.

The proposed Agreement provides a comprehensive framework for peaceful nuclear cooperation with Vietnam based on a mutual commitment to nuclear nonproliferation. The United States and Vietnam would enter into it in the context of a stated intention by Vietnam to rely on existing international markets for nuclear fuel services rather than acquiring sensitive fuel services, and a stated intention by the United States to support those international markets in order to ensure reliable nuclear fuel supply for Vietnam. These intentions are explicitly stated in the preamble to the Agreement.

The Agreement will have an initial term of 30 years from the date of its entry into force, and will continue in force thereafter for additional periods of five years each. Either Party may terminate the proposed Agreement on six months advance written notice at the end of the initial 30 year term or at the end of any subsequent five year period. Additionally, either Party may terminate the proposed Agreement on one year's written notice.

The Agreement permits the transfer of information, material, equipment (including reactors), and components for nuclear research and nuclear power production. It does not permit transfers of restricted data, sensitive nuclear technology, sensitive nuclear facilities, or major critical components of such facilities. In the event of termination of the Agreement, key nonproliferation conditions and controls continue with respect to material, equipment, and components subject to the Agreement.

Vietnam is a non-nuclear-weapon State party to the Treaty on the Nonproliferation of Nuclear Weapons. Vietnam has in force a comprehensive safeguards agreement and an Additional Protocol with the International Atomic Energy Agency. Vietnam is a party to the Convention on the Physical Protection of Nuclear Material, which establishes international standards of physical protection for the use, storage, and transport of nuclear material, and has ratified the 2005 Amendment to the Convention. A more detailed discussion of Vietnam's intended civil nuclear program and its nuclear nonproliferation policies and practices, including its nuclear export policies and practices, is provided in the Nuclear Proliferation Assessment Statement ("NPAS"), and in a classified annex to the NPAS submitted to you separately. An addendum to the NPAS containing a comprehensive analysis of the export control system of Vietnam with respect to nuclear-related matters, including interactions with countries of proliferation concern and the actual or suspected nuclear, dual-use, or missile-related transfers to such countries, pursuant to section 102A of the National Security Act of 1947 (50 U.S.C. 403-1), as amended, is being submitted to you separately by the Director of National Intelligence.

In accordance with the provisions of section 123 of the Act, the proposed Agreement was negotiated by the Department of State, with the technical assistance and concurrence of the Department of Energy. The proposed Agreement has also been reviewed by the members of the Nuclear Regulatory Commission. The Commission's views are being submitted to you separately.

In our judgment, the proposed Agreement satisfies all requirements of U.S. law for agreements of this type. We believe, as well, that U.S. cooperation with Vietnam in the peaceful uses of nuclear energy under the proposed Agreement will be supportive of U.S. nonproliferation, foreign policy, and commercial interests. We recommend, therefore, that you determine, pursuant to section 123 b. of the Act, that performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security; and that you approve the Agreement and authorize its execution.

Recommendation

That you sign the determination, approval, and authorization at Attachment 1 and the transmittal letter to Congress at Attachment 2. (The transmittal will be held until the Agreement is signed.)

Attachments:

Tab 1 – Draft Presidential determination, approval, and authorization
Tab 2 – Draft transmittal letter to the Congress (To be held until after the Agreement is signed)
Tab 3 – Text of Proposed Agreement for Cooperation Between the United States of America and the Socialist Republic of Vietnam Concerning Peaceful Uses of Nuclear Energy
Tab 4 – Unclassified Nuclear Proliferation Assessment Statement

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

CHAIRMAN

December 3, 2013

The President
The White House
Washington, DC 20500

Dear Mr. President:

In accordance with the provisions of Section 123 of the Atomic Energy Act of 1954, as amended, the Nuclear Regulatory Commission reviewed the proposed Agreement for Cooperation between the Government of the United States of America and the Government of the Socialist Republic of Vietnam Concerning Peaceful Uses of Nuclear Energy. It is the view of the Commission that the proposed Agreement includes all of the provisions required by law and provides a sufficient framework for civilian nuclear cooperation between the United States and Vietnam. The Commission therefore recommends that you make the requisite positive statutory determination, approve the proposed Agreement, and authorize its execution.

Respectfully,

Allison M. Macfarlane