




May 26, 2011

MEMORANDUM FOR: Secretarial Officers
Heads of Operating Units

FROM: Cameron Kerry 

SUBJECT: Case-Zablocki Act Review Procedures

Department Administrative Order (DAO) 218-4 assigns responsibilities to facilitate carrying out the Department's obligations under the Case-Zablocki-Act, 1 U.S.C. § 112b (Case Act) related to negotiating and entering into international agreements. The purpose of this memorandum is to clarify that the responsibilities vested in the Office of the General Counsel under that DAO may be carried out by the heads of the bureau legal offices.

Under the Case Act, Federal agencies are required to consult with the Secretary of State prior to negotiating and concluding any "international agreement" as defined in the Act. DAO 218-4 identifies the role of the Office of the General Counsel in fulfilling the Department's responsibilities regarding the negotiation and conclusion of such agreements. Under section 4 of the DAO, the negotiation and conclusion of any international agreement may be undertaken only with prior coordination with the Office of General Counsel. Under section 5, the Office of the General Counsel is responsible for determining as a threshold matter whether a proposed agreement is an "international agreement" under the Case Act and, if so, for consulting with the Department of State to obtain authorization to negotiate and conclude such an agreement.

Former General Counsel Theodore Kassinger, in a memorandum dated November 12, 2002, regarding the role of this office under DAO 218-4, clarified that all determinations and consultations with the State Department were to be carried out by this office. Based on my experience with this process, I have concluded that to facilitate efficient and timely compliance with the Case Act and DAO 218-4, certain determinations under DAO 218-4 on behalf of the Office of the General Counsel may henceforth be made by the head of the appropriate operating unit's legal office. Specifically, this delegation applies to all "international agreements" determinations unless they involve more than \$1 million or unless, in the best judgment of the head of the operating unit's legal office, they raise significant policy or diplomatic issues of which the General Counsel should be aware. When the head of an operating unit's legal office determines that the negotiation or conclusion of an agreement requires State Department authorization, the head of the legal office must notify this office of such determination, and is thereafter responsible for consulting with the State Department to obtain authorization to negotiate and conclude

such agreement. Each operating unit legal office must maintain a record of all determinations made under DAO 218-4 to be made available to this office upon request.

Please contact me if you have any questions about this memorandum.

cc: Assistant General Counsels
Chief Counsels
NOAA General Counsel
PTO General Counsel