

DEP.



This document is scheduled to be published in the Federal Register on 12/07/2020 and available online at [federalregister.gov/d/2020-26718](https://www.federalregister.gov/d/2020-26718), and on [govinfo.gov](https://www.govinfo.gov)

22 CFR Part 181

RIN 1400-AE98

[Public Notice: 10990]

Publication, Coordination, and Reporting of International Agreements:

Amendments

AGENCY: Department of State.

ACTION: Proposed rule with request for comment.

SUMMARY: The Treaties and Other International Acts Series (TIAS) is the official treaty series of the United States and serves as evidence of the treaties, and international agreements other than treaties, in all courts of law and equity of the United States, and in public offices of the federal government and of the states, without any need of further authentication. Certain international agreements may be exempted from publication in TIAS, if the Department of State provides notice in its regulations. With this proposed rule, the Department of State is proposing to update those regulations to clarify the scope of an existing exemption.

DATES: The Department of State will consider comments submitted before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: KottmyerAM@state.gov. You must include the RIN 1400-AE98 in the subject line of your message.
- Website: Persons with access to the Internet may also view this notice and provide comments by going to the [regulations.gov](https://www.regulations.gov) web site and searching Docket DOS-2019-0045 at: <http://www.regulations.gov/>.

FOR FURTHER INFORMATION CONTACT: Michael Mattler, Treaty Affairs, Office of the Legal Adviser, Department of State, Washington, D.C. 20520, (202) 647-1345, or at treatyoffice@state.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 1 U.S.C. 112a, the Secretary of State is required to cause to be published annually a compilation of all treaties and international agreements to which the United States is a party that were signed, proclaimed, or “with reference to which any other final formality ha[d] been executed” during the calendar year.

The Secretary of State, however, may determine that publication of particular categories of agreements is not required if certain criteria are met (See 1 U.S.C. 112a(b)).

The criteria are:

(1) Such agreements are not treaties that have been brought into force for the United States after having received Senate advice and consent pursuant to section 2(2) of Article II of the Constitution of the United States;

(2) The public interest in such agreements is insufficient to justify their publication, because (A) as of the date of enactment of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, the agreements are no longer in force; (B) the agreements do not create private rights or duties, or establish standards intended to govern government action in the treatment of private individuals; (C) in view of the limited or specialized nature of the public interest in such agreements, such interest can adequately be satisfied by an alternative means; or (D) the public disclosure of the text of the agreement would, in the opinion of the President, be prejudicial to the national security of the United States; and

(3) Copies of such agreements (other than those in paragraph (2)(D)), including certified copies where necessary for litigation or similar purposes, will be made available by the Department of State upon request.

Pursuant to 1 U.S.C. 112a(c), any such determination must be published in the *Federal Register*. The Department proposes amending the exemption contained in 22 CFR 181.8(a)(9) to clarify its scope. 22 CFR 181.8(a)(9) exempts from publication “Agreements that have been given a national security classification pursuant to Executive Order No. 13526, its predecessors or successors.” The Department proposes amending this subsection to read “Agreements that have been given a national security classification pursuant to Executive Order No. 13526, its predecessors or successors, or are otherwise exempt from public disclosure pursuant to U.S. law.”

In proposing this change, the Department wishes to clarify that the scope of the exemption contained in 22 CFR 181.8(a)(9) includes agreements that have not been given a national security classification pursuant to Executive Order No. 13526, its predecessors or successors, but nonetheless are exempt from public disclosure pursuant to U.S. law. The principal category of agreements for which this clarification is relevant are agreements that are exempt from public disclosure pursuant to 10 U.S.C. 130c, which authorizes specified national security officials to withhold from public disclosure otherwise required by law sensitive information of foreign governments and international organizations.

REGULATORY ANALYSIS:

Administrative Procedure Act

The Department is issuing this proposed rule for comment in accordance with the Administrative Procedure Act (5 U.S.C. 553).

Regulatory Flexibility Act/Executive Order 13272: Small Business

This rulemaking is hereby certified as not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

The Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking does not constitute a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking.

The Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure nor would it significantly or uniquely affect small governments.

Executive Orders 12372 and 13132: Federalism and Executive Order 13175, Impact on Tribes

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor will the regulations have federalism implications warranting the application of Executive Orders 12372 and 13132. This rule will not have tribal implications, will not impose costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Executive Orders 12866 and 13563: Regulatory Review

This rule has been drafted in accordance with the principles of Executive Orders 12866 and 13563. This rule has been determined to be a significant rulemaking under section 3 of Executive Order 12866, but not economically significant. With respect to the costs and benefits of this rule, the Department notes that agreements addressed by the proposed clarification are, by definition, already exempt from public disclosure pursuant to U.S. law. The proposed rule is intended to provide greater clarity to the application of the existing rule rather than to effect a change in existing practices regarding the publication of agreements. For this reason, the Department does not anticipate any costs

to the public from this rulemaking. Therefore, the Department believes that the benefits of this rulemaking outweigh any costs.

Executive Order 12988: Civil Justice Reform

This rule has been reviewed in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13771

This proposed rule is not expected to be subject to the requirements of Executive Order 13771 because this proposed rule is expected to result in no more than *de minimis* costs.

The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulation. This rule contains no new collection of information requirements.

LIST OF SUBJECTS IN 22 CFR PART 181

Treaties.

For the reasons set forth above, 22 CFR part 181 is proposed to be amended as follows:

**PART 181—COORDINATION, REPORTING AND PUBLICATION OF
INTERNATIONAL AGREEMENTS**

1. The Authority section for Part 181 continues to read as follows:

Authority: 1 U.S.C. 112a, 112b; and 22 U.S.C. 2651a.

§ 181.8 [Amended]

2. In § 181.8 revise paragraph (a)(9) to read as follows:

(a) * * *

* * *

(9) Agreements that have been given a national security classification pursuant to Executive Order No. 13526, its predecessors or successors, or are otherwise exempt from public disclosure pursuant to U.S. law.

* * *

Zachary A. Parker,
Director,
Office of Directives Management,
Department of State.

[Billing Code 4710-08]

[FR Doc. 2020-26718 Filed: 12/4/2020 8:45 am; Publication Date: 12/7/2020]