



22 CFR Part 181

[Public Notice: 12266]

RIN 1400-AF63

Publication, Coordination, and Reporting of International Agreements: Amendments; Correction

AGENCY: Department of State.

ACTION: Final rule; technical amendment.

SUMMARY: The Department of State (“Department”) finalizes regulations regarding the publication, coordination, and reporting of international agreements, which were published for comment on October 2. No comments were received. In addition, the Department is amending one of the provisions to remove misleading text in the description of the criteria with respect to qualifying non-binding instruments in the amended rule.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

SUPPLEMENTARY INFORMATION: On October 2, 2023, the Department published a rulemaking (the “final rule”) that amended 22 CFR part 181 to implement section 5947 of the National Defense Authorization Act for Fiscal Year (FY) 2023 (Pub. L. 117-263) (“the NDAA”). Section 5947 amended 1 U.S.C. 112a and 1 U.S.C. 112b, known as the Case-Zablocki Act, regarding the publication, coordination, and reporting to Congress of international agreements. For further background, see the final rule at 88 FR 67643.

The Department provided 30 days for public comment. No comments were received.

Amendment to § 181.4

The Department is removing the phrase “no single criterion or factor by itself is determinative” from § 181.4(b)(3)(i). The words were included in error, and this change is intended to avoid the regulation being interpreted to mean that a non-binding instrument could only constitute a qualifying non-binding instrument if multiple factors among those listed in (b)(3)(i)(A) through (G) weighed in favor of its significance.

Regulatory Analysis:

Administrative Procedures Act

As with the original rulemaking, the Department is issuing this rule as a final rule, asserting the “good cause” exemption to the Administrative Procedure Act (5 U.S.C. 553(b)). We are past the deadline provided by Congress to implement this rule, also past the effective date of the statute itself. See the final rule for more information.

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.

Congressional Review Act

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 national 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 14094; 13563: Regulatory Review

This rule has been drafted in accordance with the principles of Executive Order 12866, as amended by Executive Order 14094, and 13563. The rulemaking is mandated by a Congressional statute; therefore, Congress determined that the benefits of this rulemaking outweigh the costs. This rule has been determined to be a significant rulemaking under Executive Order 12866.

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.

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, the State Department amends 22 CFR part 181 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.

2. In § 181.43, revise paragraph (b)(3)(i) introductory text to read as follows:

§ 181.4 Criteria with respect to qualifying non-binding instruments.

* * * * *

(b) * * *

(3) * * *

(i) Consistent with 1 U.S.C. 112b(k)(5)(A)(ii)(I), and except for a non-binding instrument referred to in 1 U.S.C. 112b(k)(5)(B), a non-binding instrument that could reasonably be expected to have a significant impact on the foreign policy of the United States, and that meets the other elements set out in 1 U.S.C. 112b(k)(5), is a qualifying non-binding instrument within the meaning of the Act. The degree of significance of any particular instrument requires an objective wholistic assessment. In deciding whether a particular instrument meets the significance standard, the entire context of the transaction, including the factors set out below and the expectations and intent of the participants, must be taken into account. Factors that may be relevant in determining whether a non-binding instrument could reasonably be expected to have a significant impact on the foreign policy of the United States include whether, and to what extent, the instrument:

* * * * *

Joshua L. Dorosin,

*Deputy Legal Adviser,
Department of State.*

Billing Code: 4710-08

[FR Doc. 2023-27837 Filed: 12/18/2023 8:45 am; Publication Date: 12/19/2023]