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DEPARTMENT OF STATE

22 CFR Part 181

RIN: 1400-AD53

[Public Notice: 8780]

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 exempt three additional agreement categories.

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

FOR FURTHER INFORMATION CONTACT: Courtney Rusin, 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 which 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as of the date of enactment of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, the agreements are no longer in force; (B) the agreements do not create private rights or duties, or establish standards intended to govern government action in the treatment of private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 adding to 22 CFR 181.8(a) the following three categories of international agreements that it believes do not require publication in the Treaties and Other International Acts Series due to the consistently limited nature of public interest:

(1) Bilateral acquisition and cross servicing agreements and logistics support agreements governing the mutual exchange of logistics support, supplies and services with the military of certain countries or international organizations. An example of this type of agreement is at the following link: <http://www.state.gov/documents/organization/176721.pdf>.

(2) Bilateral agreements relating to the provision of health care to military personnel on a reciprocal basis. An example of this type of agreement is at the following link: <http://www.state.gov/documents/organization/190389.pdf>.

(3) Bilateral agreements for the reduction of intergovernmental debts. An example of this type of agreement is at the following link: <http://www.state.gov/documents/organization/163485.pdf>.

In selecting these categories, the Department focused on areas comprising a large volume of agreements that, due to their specialized nature, do not appear to be of general public interest justifying publication. The Department will provide copies of these agreements upon request. The public can request agreements through regular FOIA channels or through the contact information provided on the Treaty Office website - <http://www.state.gov/s/l/treaty/index.htm> (treatyoffice@state.gov or 202-647-1345). Together, these categories of agreements comprise approximately eight to ten per cent of agreements published annually. Non-publication of these categories of agreements will moderate future publication requirements, thus permitting agreements of greater interest to be published in a timelier manner. The Department of State does not intend to publish agreements in the above categories that were concluded before publication of this notice and not previously published in TIAS.

In addition to the changes described above, the Department of State proposes that Section 181(a)(9) be amended to refer to the newer Executive Order dealing with classified information.

REGULATORY ANALYSIS:

Administrative Procedures 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 EO 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 not to be a significant rulemaking under section 3 of E.O. 12866. With respect to the costs and benefits of this rule, the Department notes that TIAS is no longer printed in paper form, so there are no printing cost savings due to omitting these agreements from publication. TIAS agreements are posted digitally on the Department's website. However, before publication, they still have to be proofread and formatted correctly for the web, which takes time away from publishing agreements that more consistently attract public interest. There is no cost to the public from this rulemaking. As noted above, the public still has access to these agreements by making a simple request to the Department.

Executive Order 12988: Civil Justice Reform

This rule has been reviewed in light of sections 3(a) and 3(b)(2) of Executive Order No. 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, 22 CFR part 181 is proposed to be amended as follows:

PART 181 – [AMENDED]

1. The authority citation for part 181 continues to read as follows:

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

2. Amend §181.8 by:

a. Revising paragraphs (a)(9), (12), and (13) and adding paragraphs (a)(14), (15), and (16); and

b. Revising paragraph (b).

The revisions and additions to read as follows:

§181.8 Publication.

(a) * * *

(9) Agreements that have been given a national security classification pursuant to Executive Order No. 13526, its predecessors, or its successors;

(12) Bilateral agreements that apply to specified education and leadership development programs designed to acquaint U.S. and foreign armed forces, law enforcement, homeland security, or related personnel with limited, specialized aspects of each other's practices or operations;

(13) Bilateral agreements between aviation agencies governing specified aviation technical assistance projects for the provision of managerial, operational, and technical assistance in developing and modernizing the civil aviation infrastructure;

(14) Bilateral acquisition and cross servicing agreements and logistics support agreements;

(15) Bilateral agreements relating to the provision of health care to military personnel on a reciprocal basis; and

(16) Bilateral agreements for the reduction of intergovernmental debts.

(b) In addition to those listed in paragraph (a) of this section, the following categories of agreements will not be published in United States Treaties and Other International Agreements:

(1) Agreements on the subjects listed in paragraphs (a)(1) through (9) of this section that had not been published as of February 26, 1996;

(2) Agreements on the subjects listed in paragraphs (a)(10) through (13) of this section that had not been published as of September 8, 2006; and

(3) Agreements on the subjects listed in paragraphs (a)(14) through (16) of this section that had not been published as of [*date of publication of the final rule in the Federal Register*].

June 4, 2014

(Date)

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