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Issued on September 18, 2023.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–21632 Filed 9–29–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 181

[Public Notice: 12151]

RIN 1400–AF63

Publication, Coordination, and Reporting of International Agreements: Amendments

AGENCY: Department of State.

ACTION: Final rule; request for comment.

SUMMARY: The Department of State (''Department'') finalizes regulations regarding the publication, coordination, and reporting of international agreements. Section 5947 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 made changes regarding the reporting to Congress and publication of the texts of international agreements and related information. The amendments include changes to the scope and deadlines associated with requirements to report international agreements and related information to Congress, and to publish the texts of international agreements in the Treaties and Other International Acts Series (TIAS). These amendments are intended to reflect and to implement the recently enacted changes to the reporting process.

DATES:

Effective date: This rule is effective on October 2, 2023.

Comments due date: The Department of State will consider comments submitted until November 1, 2023.

ADDRESSES: Interested parties may submit comments to the Department by any of the following methods:

- *Internet (preferred):* At *www.regulations.gov,* you can search for the document using Docket Number DOS–2023–0024 or RIN 1400–AF63.
- *Email:* Michael Mattler, Office of the Legal Adviser, U.S. Department of State, *treatyoffice@state.gov.*
- All comments should include the commenter's name, the organization the commenter represents, if applicable, and the commenter's address. If the Department is unable to read your comment for any reason, and cannot contact you for clarification, the Department may not be able to consider your comment. After the conclusion of the comment period, the Department will publish a final rule (in which it will address relevant comments) as expeditiously as possible.

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: The Department of State is implementing amendments to 22 CFR part 181 to reflect the enactment of Section 5947 of the National Defense Authorization Act for Fiscal Year (FY) 2023 (Pub. L. 117–263) (''the NDAA''). Section 5947 amends 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.

Section 5947 expands the application of the Case-Zablocki Act's reporting and publication requirements to include ''qualifying non-binding'' instruments as defined in the statute. To implement these changes, the rule adds two new sections to 22 CFR part 181: one establishing criteria that will apply to the identification of qualifying non-binding instruments (Section 181.4) and one regarding the process the Department of State will follow for assessing whether particular non-binding instruments constitute ''qualifying non-binding instruments'' within the meaning of the statute (Section 181.5). These sections follow the form and structure of existing Sections 181.2 and 181.3 which establish comparable criteria and procedures regarding the identification of international agreements.

In accordance with 1 U.S.C. 112b(k)(5), among the elements for determining whether a non-binding instrument is a ''qualifying non-binding instrument'' for the purposes of the statute is whether the instrument ''could reasonably be expected to have a significant impact on the foreign policy of the United States.'' Amended 22 CFR 181.3(b)(3) establishes factors for consideration when assessing the significance of a non-binding instrument on the foreign policy of the United States. These factors reflect considerations cited by the Congressional sponsors of section 5947 in connection with Congress's consideration of the legislation. These factors include whether, and to what extent, the instrument is of importance to the United States' relationship with another country, such as by addressing a significant new policy or initiative (rather than ongoing activities or cooperation); affects the rights or responsibilities of U.S. citizens, U.S. nationals, or individuals in the United States; impacts State laws; has budgetary or appropriations impact; requires changes to U.S. law to satisfy commitments made therein; presents a new commitment or risk for the entire Nation; and is of Congressional or public interest.

The procedures set out in 22 CFR 181.4(b) for assessing whether particular non-binding instruments could reasonably be expected to have a significant impact on the foreign policy of the United States provide for such assessments to be made in the first instance by the State Department bureau for instruments negotiated by the Department of State or the U.S. Government agency responsible for negotiating the instrument. On a monthly basis a list of instruments identified by State Department bureaus and U.S. Government agencies as reasonably expected to have a significant impact on the foreign policy of the United States will be submitted to the Under Secretary of State for Political Affairs for approval for transmittal to the Congress in accordance with the Case-Zablocki Act.

Amendments to 22 CFR 181.6 update the procedures by which U.S. Government agencies consult with the Secretary of State regarding international agreements proposed for negotiation or conclusion to reflect developments in practice and technical clarifications since 22 CFR 181.6 was last updated. Amendments to this section also reflect recommendations from the Government Accountability Office designed to facilitate the identification and monitoring of international agreements containing fiscal contingencies that could give rise to future financial losses or other costs for the United States or U.S. Government agencies in amounts that could be material for the purposes of reporting on annual financial statements.

Amendments to 22 CFR 181.7 consolidate in a single section guidance previously contained in other sections of the regulations regarding transmittal by U.S. Government agencies to the Department of State of international agreements and related material. They also include new guidance on the transmittal of qualifying non-binding instruments and related material to reflect new requirements contained in section 5947 of NDAA 2023, as well as

updated deadlines for the transmittal of materials reflected in that section.

Amendments to 22 CFR 181.8 implement changes made by Section 5947 in the categories of information required to be transmitted to the Congress related to international agreements and qualifying non-binding instruments. The new provisions are drawn from the text of the relevant statutory requirements.

Amendments to 22 CFR 181.9 implement changes made by section 5947 of NDAA 2023 regarding requirements for the publication of international agreements. They reflect new requirements to publish the texts of qualifying non-binding instruments as well as information regarding legal authorities relied upon to enter into international agreements and qualifying non-binding instruments, and any new legislative or regulatory authorities needed to implement such agreements and instruments. Amendments to this section also reflect changes made by section 5947 to categories of international agreements that are exempt from requirements to be published and to deadlines for publication. The amended language in this section is drawn from the text of section 5947.

Regulatory Analysis

Administrative Procedures Act

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)). The Department finds that public comment would be impractical prior to the effective date of this rulemaking, given the short deadline provided by Congress to implement this rule, and the imminent effective date of the statute itself. See *Sepulveda* v. *Block*, 782 F.2d 363 (2d Cir. 1986). Section 5947(a)(5) requires ''the President, through the Secretary of State [to] promulgate such rules and regulations as may be necessary'' to implement the changes to 1 U.S.C. 112b, not later than 180 days after the date of statute's enactment. Section 5947(c) provided that the amendments ''shall take effect on the date that is 270 days after the date of the enactment of this Act.'' The NDAA was signed by the President on December 23, 2022, resulting in a deadline for the finalization of the required rules of June 21, 2023, and the statute itself became effective on September 19, 2023. However, the Department will consider relevant public comments submitted up to 30 days after publication.

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 section 3 of Executive Order 12866, but not economically significant.

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 revises 22 CFR part 181 to read as follows:

PART 181—COORDINATION, REPORTING AND PUBLICATION OF INTERNATIONAL AGREEMENTS

Sec.

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

§ 181.1 Purpose and application.

(a) The purpose of this part is to implement the provisions of 1 U.S.C. 112b, popularly known as the Case-Zablocki Act (hereinafter ''the Act''), on the reporting to Congress and publication of international agreements and qualifying non-binding instruments and related coordination with the Secretary of State. This part applies to all agencies of the U.S. Government whose responsibilities include the negotiation and conclusion of international agreements and qualifying non-binding instruments. This part does not, however, constitute a delegation by the Secretary of State of the authority to engage in such activities. Further, it does not affect any additional requirements of law governing the relationship between particular agencies and the Secretary of State in connection with international negotiations and agreements, or any other requirements

of law concerning the relationship between particular agencies and the Congress. The term ''agency'' as used in this part means each authority of the United States Government, whether or not it is within or subject to review by another agency.

(b) Pursuant to the key legal requirements of the Act—full and timely disclosure to the Congress of all concluded international agreements and qualifying non-binding instruments, publication of international agreements and qualifying non-binding instruments, and consultation by agencies with the Secretary of State with respect to proposed international agreements—every agency of the U.S. Government is required to comply with each of the provisions set out in this part in implementation of the Act. Nevertheless, this part is intended as a framework of measures and procedures which, it is recognized, cannot anticipate all circumstances or situations that may arise. Deviation or derogation from the provisions of this part will not affect the legal validity, under United States law or under international law, of international agreements concluded, will not give rise to a cause of action, and will not affect any public or private rights established by such agreements, Similarly, any such deviation will not affect the status or effectiveness of any non-binding instrument.

(c) To facilitate coordination with the Department of State in the implementation of the Act, agencies whose responsibilities include the negotiation and conclusion of international agreements or qualifying non-binding instruments shall notify the Department of State of the official designated as the agency's Chief International Agreements Officer in accordance with 1 U.S.C. 112b(e) promptly upon that official's designation, and shall promptly inform the Department of any changes in the official designated.

(d) For the Department of State, the Deputy Legal Adviser with supervisory responsibility over the Office of Treaty Affairs will be designated as the Department's Chief International Agreements Officer in accordance with 1 U.S.C. 112b(e), and will have the title of International Agreements Compliance Officer.

§ 181.2 Criteria with respect to international agreements.

(a) *General.* The following criteria are to be applied in deciding whether any undertaking, oral agreement, document, or set of documents, including an exchange of notes or of correspondence, constitutes an international agreement within the meaning of the Act. Each of the criteria except those in paragraph (a)(5) of this section must be met in order for any given undertaking of the United States to constitute an international agreement within the meaning of the Act.

(1) *Identity and intention of the parties.* A party to an international agreement must be a state, a state agency, or an intergovernmental organization. The parties must intend their undertaking to be legally binding, and not merely of political or personal effect. Documents intended to have political or moral weight, but not intended to be legally binding, are not international agreements. An example of the latter is the Final Act of the Helsinki Conference on Cooperation and Security in Europe. In addition, the parties must intend their undertaking to be governed by international law, although this intent need not be manifested by a third-party dispute settlement mechanism or any express reference to international law. In the absence of any provision in the arrangement with respect to governing law, it will be presumed to be governed by international law. This presumption may be overcome by clear evidence, in the negotiating history of the arrangement or otherwise, that the parties intended the arrangement to be governed by another legal system. Arrangements governed solely by the law of the United States, or one of the states or jurisdictions thereof, or by the law of any foreign state, are not international agreements for these purposes. For example, a foreign military sales loan agreement governed in its entirety by U.S. law is not an international agreement.

(2) *Significance of the arrangement.* Minor or trivial undertakings, even if couched in legal language and form, are not considered international agreements within the meaning of the Act. In deciding what level of significance must be reached before a particular arrangement becomes an international agreement, the entire context of the transaction and the expectations and intent of the parties must be taken into account. The duration of the activities pursuant to the undertaking or the duration of the undertaking itself shall not be a factor in determining whether it constitutes an international agreement. It remains a matter of judgment based on all of the circumstances of the transaction. Determinations are made pursuant to § 181.3. Examples of arrangements that may constitute international agreements are agreements that:

(i) Are of political significance;

(ii) Involve substantial grants of funds or loans by the United States or credits payable to the United States;

(iii) Constitute a substantial commitment of funds that extends beyond a fiscal year or would be a basis for requesting new appropriations;

(iv) Involve continuing and/or substantial cooperation in the conduct of a particular program or activity, such as scientific, technical, or other cooperation, including the exchange or receipt of information and its treatment, or the pooling of data. However, individual research grants and contracts do not ordinarily constitute international agreements.

(3) *Specificity, including objective criteria for determining enforceability.* International agreements require precision and specificity in the language setting forth the undertakings of the parties. Undertakings couched in vague or very general terms containing no objective criteria for determining enforceability or performance are not normally international agreements. Most frequently such terms reflect an intent not to be bound. For example, a promise to ''help develop a more viable world economic system'' lacks the specificity essential to constitute a legally binding international agreement. However, the intent of the parties is the key factor. Undertakings as general as those of, for example, Articles 55 and 56 of the United Nations Charter have been held to create internationally binding obligations intended as such by the parties.

(4) *Necessity for two or more parties.* While unilateral commitments on occasion may be legally binding, they do not constitute international agreements. For example, a statement by the President promising to send money to Country Y to assist earthquake victims would not be an international agreement. It might be an important undertaking, but not all undertakings in international relations are in the form of international agreements. Care should be taken to examine whether a particular undertaking is truly unilateral in nature, or is part of a larger bilateral or multilateral set of undertakings. Moreover, ''consideration,'' as that term is used in domestic contract law, is not required for international agreements.

(5) *Form.* Form as such is not normally an important factor, but it does deserve consideration. Documents which do not follow the customary form for international agreements, as to matters such as style, final clauses, signatures, or entry into force dates, may or may not be international agreements. Failure to use the customary form may

constitute evidence of a lack of intent to be legally bound by the arrangement. If, however, the general content and context reveal an intention to enter into a legally binding relationship, a departure from customary form will not preclude the arrangement from being an international agreement. Moreover, the title of the agreement will not be determinative. Decisions will be made on the basis of the substance of the arrangement, rather than on its denomination as an international agreement, a memorandum of understanding, exchange of notes, exchange of letters, technical arrangement, protocol, note verbale, aide-memoire, agreed minute, or any other name.

(b) *Agency-level agreements.* Agency-level agreements are international agreements within the meaning of the Act if they satisfy the criteria discussed in paragraph (a) of this section. The fact that an agreement is concluded by and on behalf of a particular agency of the United States Government, rather than the United States Government, does not mean that the agreement is not an international agreement. Determinations are made on the basis of the substance of the agency-level agreement in question.

(c) *Implementing agreements.* (1) An implementing agreement, if it satisfies the criteria discussed in paragraph (a) of this section, may itself be an international agreement within the meaning of the Act, depending upon how precisely it is anticipated and identified in the underlying agreement it is designed to implement. If the terms of the implementing agreement are closely anticipated and identified in the underlying agreement, only the underlying agreement is considered an international agreement. For example, the underlying agreement might call for the sale by the United States of 1,000 tractors, and a subsequent implementing agreement might require a first installment on this obligation by the sale of 100 tractors of the brand X variety. In that case, the implementing agreement is sufficiently identified in the underlying agreement, and would not itself be considered an international agreement within the meaning of the Act. Project annexes and other documents which provide technical content for an umbrella agreement are not normally treated as international agreements. However, if the underlying agreement is general in nature, and the implementing agreement meets the specified criteria of paragraph (a) of this section, the implementing agreement itself might well be an international agreement within the meaning of the Act. For example, if the underlying agreement calls for the conclusion of ''agreements for agricultural assistance,'' but without further specificity, then a particular agricultural assistance agreement subsequently concluded in ''implementation'' of that obligation, provided it meets the criteria discussed in paragraph (a) of this section, would constitute an international agreement independent of the underlying agreement.

(2) Although the considerations discussed in this paragraph generally are to be applied to determine whether an implementing agreement is itself an international agreement within the meaning of the Act, the Act specifies some circumstances in which an implementing agreement may be subject to the requirements of the Act for reasons independent of the considerations in this paragraph. For example, the Act defines the ''text'' of an international agreement to include ''any implementing agreement or arrangement . . . that is entered into contemporaneously and in conjunction with the international agreement,'' and further provides, subject to some exceptions, that the Secretary shall submit to specified members of Congress the text of implementing agreements not otherwise covered by the Act not later than 30 days after receipt of a request from the Chair or Ranking Member of the Senate Foreign Relations Committee or the House Foreign Affairs Committee for the text of such implementing agreements.

(d) *Extensions and modifications of agreements.* If an undertaking constitutes an international agreement within the meaning of the Act, then a subsequent extension or modification of such an agreement would itself constitute an international agreement within the meaning of the Act.

(e) *Oral agreements.* Any oral arrangement that meets the criteria discussed in paragraphs (a)(1) through (4) of this section is an international agreement and, pursuant to section (f) of the Act, must be reduced to writing by the agency that concluded the oral arrangement. In such written form, the arrangement is subject to all the requirements of the Act and of this part. Whenever a question arises whether an oral arrangement constitutes an international agreement, the arrangement shall be reduced to writing and the decision made in accordance with § 181.3.

§ 181.3 Determinations with respect to international agreements.

(a) Whether any undertaking, document, or set of documents constitutes or would constitute an international agreement within the meaning of the Act shall be determined by the Legal Adviser of the Department of State, a Deputy Legal Adviser, or in most cases the Assistant Legal Adviser for Treaty Affairs. Such determinations shall be made either on a case-by-case basis, or on periodic consultation, as appropriate.

(b) Agencies whose responsibilities include the negotiation and conclusion of international agreements are responsible for transmitting to the Assistant Legal Adviser for Treaty Affairs, for decision pursuant to paragraph (a) of this section, the text, as defined in § 181.10, of any document or set of documents that might constitute an international agreement. The transmittal shall be made prior to or simultaneously with the request for consultations with the Secretary of State required by subsection (g) of the Act and § 181.6.

(c) Agencies to which paragraph (b) of this section applies shall consult periodically with the Assistant Legal Adviser for Treaty Affairs in order to determine which categories of arrangements for which they are responsible are likely to be international agreements within the meaning of the Act.

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

(a) General. Pursuant to 1 U.S.C. 112b(k)(5), a qualifying non-binding instrument is a non-binding instrument that:

(1) Is or will be under negotiation, is signed or otherwise becomes operative, or is implemented with one or more foreign governments, international organizations, or foreign entities, including non-state actors; and

(2)(i) Could reasonably be expected to have a significant impact on the foreign policy of the United States; or

(ii) Is the subject of a written communication from the Chair or Ranking Member of the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives to the Secretary.

(3) Consistent with 1 U.S.C. 112b(k)(5)(B), any non-binding instrument that is signed or otherwise becomes operative or is implemented pursuant to the authorities relied upon by the Department of Defense, the Armed Forces of the United States, or any element of the intelligence community does not constitute a qualifying non-binding instrument.

(4) As outlined in further detail in this part, requirements under 1 U.S.C. 112b

regarding the transmittal to Congress and publication of qualifying non-binding instruments and related information apply only to qualifying non-binding instruments that have been signed, concluded, or otherwise finalized, and do not apply to instruments under negotiation prior to being signed, concluded, or otherwise finalized.

(b) *Significant foreign policy impact non-binding instruments.* The criteria set out in the following paragraphs are to be applied in deciding whether any undertaking, document, or set of documents, including an exchange of notes or of correspondence, constitutes a non-binding instrument that could reasonably be expected to have a significant impact on the foreign policy of the United States within the meaning of section 112b(k)(5)(A)(ii)(I) of the Act.

(1) *Legal character.* Non-binding instruments are intended to have political or moral weight, rather than legal force. An instrument is not a non-binding instrument if it gives rise to legal rights or obligations under either international law or domestic law.

(2) *Participants.* Consistent with 1 U.S.C. 112b(k)(5)(A)(i), a qualifying non-binding instrument may be concluded between the United States (or an agency thereof) and one or more foreign governments (or an agency thereof), international organizations, or foreign entities, including non-state actors.

(3) *Significance.* (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; no single criterion or factor by itself is determinative. 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:

(A) Is of importance to the United States' relationship with another country, such as by addressing a significant new policy or initiative (rather than ongoing activities or cooperation);

(B) Affects the rights or responsibilities of U.S. citizens, U.S. nationals, or individuals in the United States;

(C) Impacts State laws;

(D) Has budgetary or appropriations impact;

(E) Requires changes to U.S. law to satisfy commitments made therein;

(F) Presents a new commitment or risk for the entire Nation); and

(G) Is of Congressional or public interest.

(ii) In applying these criteria, neither the form or structure of the instrument nor the number of participants involved shall be determinative of whether the instrument meets the significance standard. Similarly, neither the duration of the activities pursuant to the instrument nor the duration of the instrument itself shall be determinative of whether the instrument meets the standard. An instrument that is technical in nature could meet the standard if, for example, it was of particular importance to a bilateral relationship, or if it satisfied other of the criteria set out in this section.

(iii) In the context of these considerations, non-binding instruments concluded as part of the regular work of international organizations and fora such as the United Nations and its specialized agencies, the G–20, and similar multilateral or regional groupings and that are made public within 30 days of their conclusion in most instances will not be submitted to Congress pursuant to 1 U.S.C. 112b(k)(5)(A)(ii)(I). Similarly, instruments memorializing general outcomes of meetings between senior U.S. officials and foreign counterparts and that are made public within 30 days of their conclusion in most instances will not be submitted to Congress pursuant to 1 U.S.C. 112b(k)(5)(A)(ii)(I).

(iv) In the context of these criteria, non-binding instruments concluded for the purposes of facilitating routine sharing of information (including personally identifiable information of U.S. citizens, U.S. nationals, or other individuals in the United States) in a manner authorized by U.S. law for the purposes of law enforcement cooperation, will not, on that basis alone, be regarded as expected to have a significant impact on the foreign policy of the United States.

(c) Non-binding instruments requested by Congress. In accordance with section 112b(k)(5)(A)(ii)(II) of the Act, and except for instruments referred to in section 112b(k)(5)(B) of the Act, a non-binding instrument that is the subject of a written communication from the Chair or Ranking Member of either of the appropriate congressional committees defined in the Act as the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs, to the Secretary is a qualifying non-binding instrument.

§ 181.5 Determinations with respect to qualifying non-binding instruments.

(a) *In general.* Whether a non-binding instrument constitutes a qualifying non-binding instrument for the purposes of the Act shall be determined in accordance with this section and 1 U.S.C. 112b(k)(5)(B), as referenced in § 181.4(a).

(b) *Significant foreign policy impact non-binding instruments.* (1) Department of State bureaus whose responsibilities include the negotiation of non-binding instruments, or the oversight of negotiation of non-binding instruments by posts abroad, shall designate an official no lower than the rank of Deputy Assistant Secretary to be responsible for the identification of instruments, except for instruments referred to in section 112b(k)(5)(B) of the Act, that could reasonably be expected to have a significant impact on the foreign policy of the United States. In identifying such instruments, bureaus shall take into account the considerations set out in § 181.4.

(2) As provided in § 181.7(a)(2), Department of State bureaus whose responsibilities include the negotiation of non-binding instruments, or the oversight of negotiation of non-binding instruments by posts abroad, shall notify the Bureau of Legislative Affairs and the Office of the Assistant Legal Adviser for Treaty Affairs within 15 days of the signature, conclusion, or other finalization of a qualifying non-binding instrument that they have identified as one that could reasonably be expected to have a significant impact on the foreign policy of the United States. Bureaus shall also indicate whether the instrument has already been published, or whether it is anticipated to be published, either on the website of the Department of State or by a depositary or other similar administrative body.

(3) As provided in § 181.7(a)(2), agencies whose responsibilities include the negotiation and conclusion of non-binding instruments shall transmit to the Department via a memorandum addressed to the Department's Executive Secretary the text of any qualifying non-binding instrument that they, applying the criteria in § 181.4(b), determine could reasonably be expected to have a

significant impact on the foreign policy of the United States within 15 days of its signature, conclusion, or other finalization. Upon receipt, such documents shall be transmitted to the Bureau of Legislative Affairs and the Office of the Assistant Legal Adviser for Treaty Affairs.

(4) On a monthly basis, the Bureau of Legislative Affairs and the Office of the Assistant Legal Adviser for Treaty Affairs shall compile a list of qualifying non-binding instruments received in accordance with paragraphs (b)(2) and (3) of this section and shall submit the list to the Under Secretary of State for Political Affairs for his or her approval for transmittal to the Congress in accordance with the procedures set out in § 181.8.

(5) State Department bureaus and U.S. Government agencies are encouraged to identify qualifying non-binding instruments that could reasonably be expected to have a significant impact on the foreign policy of the United States at the earliest possible stage during the negotiating process and to advise of their expected conclusion in advance of the deadlines specified in paragraphs (b)(2) and (3) of this section, in order to facilitate timely compliance with the Act.

(c) *Qualifying non-binding instruments requested by Congress.* The Department of State's Bureau of Legislative Affairs shall be responsible for receiving on behalf of the Secretary communications related to non-binding instruments from the Chair or Ranking Member of either of the appropriate congressional committees (see § 181.4(a)(2)(ii)) in accordance with the Act. Upon receipt of such a communication, the Bureau of Legislative Affairs shall immediately notify the Department of State bureau or U.S. Government agency responsible for the negotiation and conclusion of any qualifying non-binding instrument that is the subject of the communication, with a view to receiving the text of any such qualifying non-binding instrument and associated information in accordance with § 181.7(a)(2) for transmittal to the requesting member in accordance with § 181.8.

§ 181.6 Consultations with the Secretary of State.

(a) The Secretary of State is responsible, on behalf of the President, for ensuring that all proposed international agreements of the United States are fully consistent with United States foreign policy objectives. In accordance with 1 U.S.C. 112b(g), no agency of the U.S. Government may sign or otherwise conclude an international agreement, whether entered into in the name of the U.S. Government or in the name of the agency, without prior consultation with the Secretary of State or the Secretary's designee. At an early stage in the development and negotiation of non-binding instruments, agencies should also consult as appropriate with the Department of State to facilitate identification at an early stage of instruments that may constitute qualifying non-binding instruments for the purposes of the Act, and to ensure that the intended non-binding character of such instruments is appropriately reflected in their drafting. . .

(b) Consultation with the Secretary of State (or the Secretary's designee) regarding proposed international agreements, including to obtain authority to negotiate or conclude an international agreement, shall be done pursuant to Department of State procedures set out in Volume 11, Foreign Affairs Manual, Chapter 700 (Circular 175 procedure). Officers of the Department of State shall be responsible for the preparation of all documents required by the Circular 175 procedure.

(c) Any agency wishing to commence negotiations for a proposed international agreement or to conclude an international agreement shall transmit to the interested bureau or office in the Department of State, or to the Office of the Legal Adviser, for consultation pursuant to this section, the following:

(1) A draft text of the proposed agreement or a detailed summary of the proposed agreement if the text is not available (where authority to negotiate a proposed agreement is sought) or the text of the agreement proposed to be concluded (where authority to conclude an agreement is sought).

(2) A detailed description of the Constitutional, statutory, or treaty authority proposed to be relied upon to negotiate or to conclude the agreement. If multiple authorities are relied upon, all such authorities shall be cited. All citations to the Constitution of the United States, a treaty, or a statute shall include the specific article or section and subsection reference whenever available and, if not available, shall be as specific as possible. If the authority relied upon is or includes article II of the Constitution of the United States, the basis for that reliance shall be explained.

(3) Other relevant background information, including:

(i) If a proposed agreement embodies a commitment to furnish funds, goods, or services that are beyond or in addition to those authorized in an approved budget, the agency proposing the agreement shall state what arrangements have been planned or carried out concerning consultation with the Office of Management and Budget for such commitment. The Department of State should receive confirmation that the relevant budget approved by the President provides or requests funds adequate to fulfill the proposed commitment, or that the President has made a determination to seek the required funds.

(ii) If a proposed agreement embodies a commitment that could reasonably be expected to require (for its implementation) the issuance of a significant regulatory action (as defined in section 3 of Executive Order 12866), the agency proposing the agreement shall state what arrangements have been planned or carried out concerning timely consultation with the Office of Management and Budget (OMB) for such commitment. The Department of State should receive confirmation that OMB has been consulted in a timely manner concerning the proposed commitment.

(iii) If a proposed agreement contains fiscal contingencies that could give rise to material future financial losses or other costs for the United States (or an agency thereof), the agency proposing the agreement shall identify the contingency and indicate what arrangements have been planned for monitoring the contingency and for meeting any expenses that may arise from it.

(d) The Department of State will endeavor to complete the consultation process in respect of a proposed international agreement in most cases within 30 days of receipt of a request for consultation pursuant to this section and of the information specified in paragraph (c) of this section. The negotiation or conclusion (as the case may be) of a proposed international agreement may not be undertaken prior to the completion of the consultation process.

(e) Consultation may encompass a specific class of agreements rather than a particular agreement where a series of agreements of the same general type is contemplated; that is, where a number of agreements are to be negotiated according to a more or less standard formula, such as, for example, Public Law 480 Agricultural Commodities Agreements. Any agency wishing to conclude a particular agreement within a specific class of agreements about which consultations have previously been held pursuant to this section shall transmit a draft text of the proposed agreement to the Office of the Legal

Adviser as early as possible but in no event later than 20 days prior to the anticipated date for concluding the agreement.

(f) The consultation requirement shall be deemed to be satisfied with respect to proposed international agreements of the United States about which the Secretary of State (or the Secretary's designee) has been consulted in the Secretary's capacity as a member of an interagency committee or council established for the purpose of approving such proposed agreements. Such consultation should encompass both policy and legal issues associated with the proposed agreement. Designees of the Secretary of State serving on any such interagency committee or council are to provide as soon as possible to the interested offices or bureaus of the Department of State and to the Office of the Legal Adviser copies of draft texts or summaries of such proposed agreements and other background information as requested.

(g) Before an international agreement containing a foreign language text may be signed or otherwise concluded, a signed memorandum must be obtained from a responsible language officer of the Department of State or of the U.S. Government agency concerned certifying that the foreign language text and the English language text are in conformity with each other and that both texts have the same meaning in all substantive respects. The signed memorandum is to be made available to the Department of State upon request.

§ 181.7 Fifteen-day rule for transmittal of concluded international agreements and qualifying non-binding instruments to the Department of State.

(a) This rule, which is required by section 112b(d) of the Act, is essential for purposes of permitting the Department of State to meet its obligations under the Act to transmit concluded international agreements and qualifying non-binding instruments to the Congress by the end of the month following their conclusion, and to report on international agreements and qualifying non-binding instruments that entered into force or became operative by the end of the month following the date on which they entered into force or became operative.

(1) International agreements. Any agency, including the Department of State, that concludes an international agreement within the meaning of the Act, whether entered into in the name of the U.S. Government or in the name of the agency, must transmit the following documents and certification to the Office of the Assistant Legal Adviser for Treaty Affairs at the Department of State in accordance with the procedures set out in Volume 11, Foreign Affairs Manual, Chapter 700, as soon as possible and in no event to arrive at that office later than fifteen (15) days after the date the agreement is signed or otherwise concluded:

(i) Signed or initialed original texts constituting the agreement, together with all accompanying papers, including any annex, appendix, codicil, side agreement, side letter, or any document of similar purpose or function to the aforementioned regardless of the title of the document that is entered into contemporaneously and in conjunction with the agreement, and any implementing agreements or arrangements or any document of similar purpose or function to the aforementioned regardless of the title of the document that is entered into contemporaneously and in conjunction with the agreement. (See § 181.10.) The texts transmitted must be accurate, legible, and complete, and must include the texts of all languages in which the international agreement was signed, or initialed;

(A) Where the original texts of concluded international agreements are not available, certified copies must be transmitted in the same manner as original texts. A certified copy must be an exact copy of the signed original.

(B) When an exchange of diplomatic notes between the United States and a foreign government constitutes an international agreement or has the effect of extending, modifying, or terminating an international agreement, a properly certified copy of the note from the United States to the foreign government, and the signed original or the note from the foreign government to the United States, must be transmitted.

(C) If in conjunction with the international agreement signed, other diplomatic notes are exchanged (either at the same time, beforehand, or subsequently), properly certified copies of the diplomatic notes from the United States to the foreign government must be transmitted with the signed originals of the notes from the foreign government.

(D) Copies may be certified either by a certification on the document itself, or by a separate certification attached to the document.

(1) A certification on the document itself is placed at the end of the document, either typed or stamped, and states that the document is a true copy of the original text signed or initialed by (insert full name of signatory), and is signed by the certifying officer.

(2) A certification on a separate document is typed and briefly describes the document being certified and states that it is a true copy of the original text signed or initialed by (insert full name of signatory), and is signed by the certifying officer.

(ii) A signed memorandum of language conformity obtained pursuant to § 181.6(g), as applicable;

(iii) A statement listing the names and titles/positions of the individuals signing or initialing the international agreement for the foreign government as well as for the United States, unless clear in the texts being transmitted;

(iv) A statement identifying the Circular 175 authorization pursuant to which the international agreement was concluded, so that the sources of legal authority relevant to the agreement's conclusion and implementation may be readily identified for inclusion in reporting to Congress under the Act; and

(v) the exchange of diplomatic notes bringing an international agreement into force, as applicable.

(2) Qualifying non-binding instruments. (i) When a Department of State bureau identifies a non-binding instrument that is not covered by section 112b(k)(5)(B) of the Act as one that could reasonably be expected to have a significant impact on the foreign policy of the United States pursuant to § 181.5(b), the bureau shall provide to the Bureau of Legislative Affairs and the Office of the Assistant Legal Adviser for Treaty Affairs within 15 days of the conclusion of the qualifying non-binding instrument the documents and information specified in paragraph (a)(1)(iv) of this section.

(ii) When an agency other than the Department of State, applying the criteria in § 181.4(b), determines that a non-binding instrument (other than a non-binding instrument covered by section 112b(k)(5)(B) of the Act) could reasonably be expected to have a significant impact on the foreign policy of the United States, the agency shall transmit to the Department via a memorandum addressed to the Department's Executive Secretary within 15 days of the conclusion of the qualifying non-binding instrument the documents and information specified in subparagraph iv.

(iii) When a Department of State bureau or an agency receives from the Department of State's Bureau of Legislative Affairs notice of a written communication related to a qualifying non-binding instrument from the Chair or Ranking Member of either of the appropriate congressional committees in accordance with § 181.5(c), the bureau or agency shall provide to the Bureau of

Legislative Affairs and the Office of the Assistant Legal Adviser for Treaty Affairs within 15 days the documents and information specified in subparagraph iv.

(iv) The documents and information to be provided pursuant to paragraphs (a)(2)(i), (ii), and (iii) of this section are as follows:

(A) The text of the qualifying non-binding instrument (the signed original instrument need not be submitted), together with all accompanying papers, including any annex, appendix, codicil, side agreement, side letter, or any document of similar purpose or function to the aforementioned regardless of the title of the document that is entered into contemporaneously and in conjunction with the instrument, and any implementing agreements or arrangements or any document of similar purpose or function to the aforementioned regardless of the title of the document that is entered into contemporaneously and in conjunction with the instrument (See section 181.10);

(B) A detailed description of the Constitutional, statutory, or treaty authority relied upon to conclude the qualifying non-binding instrument. If multiple authorities are relied upon, all such authorities shall be cited. All citations to the Constitution of the United States, a treaty, or a statute shall include the specific article or section and subsection reference whenever available and, if not available, shall be as specific as possible. If the authority relied upon is or includes article II of the Constitution of the United States, the basis for that reliance shall be explained;

(C) A description of any new or amended statutory or regulatory authority anticipated to be required to implement the instrument for inclusion in reporting to Congress under the Act; and

(D) An indication of whether the text has been published on the website of the Department of State or of another U.S. Government agency, or by a depositary or other similar administrative body.

(b) On an ongoing basis, State Department bureaus and U.S. Government agencies shall promptly provide to the Bureau of Legislative Affairs and the Assistant Legal Adviser for Treaty Affairs any implementing materials related to an international agreement or qualifying non-binding instrument needed to respond to a request from the Chair or Ranking Member of the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives for such materials in accordance with 1 U.S.C. 112b(c). State Department bureaus and U.S. Government agencies shall provide to the Bureau of Legislative Affairs and the Assistant Legal Adviser for Treaty Affairs materials responsive to the congressional communication within 15 days of being informed of such communication.

(c) In the event the text of an international agreement or qualifying non-binding instrument changes between the time of its conclusion and the time of its entry into force or effect, State Department bureaus and U.S. Government agencies shall provide to the Assistant Legal Adviser for Treaty Affairs the revised text of the agreement or qualifying non-binding instrument within 15 days of its entry into force or effect so that the Department is able to provide the revised text to Congress within the statutorily-required time period.

§ 181.8 Transmittal to the Congress.

(a) Not less frequently than once each month the Assistant Legal Adviser for Treaty Affairs shall transmit to the Majority Leader of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, and to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives the following:

(1) A list of all international agreements and qualifying non-binding instruments signed, concluded, or otherwise finalized during the prior month;

(2) The text of all international agreements and qualifying non-binding instruments described in subparagraph (a)(1) of this section;

(3) For each international agreement and qualifying non-binding instrument transmitted, a detailed description of the legal authority relied upon to enter into the international agreement or qualifying non-binding instrument;

(4) A list of all international agreements that entered into force and qualifying non-binding instruments that became operative for the United States or an agency of the United States during the prior month;

(5) The text of all international agreements and qualifying non-binding instruments described in paragraph (a)(4) of this section if such text differs from the text of the agreement or instrument previously provided pursuant to paragraph (a)(2) of this section; and

(6) A statement describing any new or amended statutory or regulatory authority anticipated to be required to fully implement each international agreement and qualifying non-binding instrument included in the list described in paragraph (a)(1) of this section.

(b) If any of the information or texts to be transmitted pursuant to paragraph (a) of this section is or contains classified information, the Assistant Legal Adviser for Treaty Affairs shall transmit such information or texts in a classified annex.

(c) Pursuant to section 12 of the Taiwan Relations Act (22 U.S.C. 3311), any agreement entered into between the American Institute in Taiwan and the governing authorities on Taiwan, or any agreement entered into between the Institute and an agency of the United States Government, shall be transmitted by the Assistant Legal Adviser for Treaty Affairs to the President of the Senate and to the Speaker of the House of Representatives as soon as practicable after the entry into force of such agreements, but in no event later than 60 days thereafter. Classified agreements entered into by the Institute shall be transmitted by the Assistant Legal Adviser for Treaty Affairs to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs.

§ 181.9 Publication of international agreements and qualifying non-binding instruments.

(a) *Publication of international agreements.* Not later than 120 days after the date on which an international agreement enters into force, the Office of the Assistant Legal Adviser for Treaty Affairs shall be responsible for making the text of the agreement, as that term is defined in § 181.10, available to the public on the website of the Department of State, unless one of the exemptions to publication in paragraph (d) of this section applies.

(b) *Publication of qualifying non-binding instruments.* Not less frequently than once every 120 days, the Assistant Legal Adviser for Treaty Affairs shall provide to the Bureau of Administration and the Bureau of Administration shall publish on the website of the Department of State the text, as that term is defined in § 181.10(c), of each qualifying nonbinding instrument that became operative during the preceding 120 days, unless one of the exemptions to publication in paragraph (d) of this section applies. In the case of a qualified non-binding instrument that is the subject of a communication from the Chair or Ranking Member of either of the appropriate congressional committees pursuant to section 112b(k)(5)(A)(ii)(II) of the Act, the

Bureau of Legislative Affairs, in coordination with the Assistant Legal Adviser for Treaty Affairs, shall provide the text of the instrument, as that term is defined in § 181.1(c), to the Bureau of Administration for publication on the website of the Department of State, unless one of the exemptions to publication in paragraph (d) of this section applies.

(c) *Publication of information related to international agreements and qualifying non-binding instruments.* With respect to each international agreement published pursuant to paragraph (a) of this section and each qualifying non-binding instrument published pursuant to paragraph (b) of this section, and with respect to international agreements and qualifying non-binding instruments that have been separately published by a depositary or other similar administrative body in accordance with paragraph (d)(i)(v) of this section, the Assistant Legal Adviser for Treaty Affairs shall provide to the Bureau of Administration for publication on the website of the Department of State within the timeframes specified in those subsections a detailed description of the legal authority relied upon to enter into the agreement or instrument, and a statement describing any new or amended statutory or regulatory authority anticipated to be required to implement the agreement or instrument.

(d) *Exemptions from publication.* (1) Pursuant to 1 U.S.C. 112b(b)(3), the following categories of international agreements and qualifying non-binding instruments will not be published:

(i) International agreements and qualifying non-binding instruments that contain information that has been given a national security classification pursuant to Executive Order 13526 (50 U.S.C. 3161 note; relating to classified national security information) or any predecessor or successor order, or that contain any information that is otherwise exempt from public disclosure pursuant to United States law. ''Information that is otherwise exempt from public disclosure pursuant to United States law'' includes information that is exempt from public disclosure under the Freedom of Information Act pursuant to one of the exemptions set out in 5 U.S.C. 552(b)(1) through (9);

(ii) International agreements and qualifying non-binding instruments that address military operations, military exercises, acquisition and cross servicing, logistics support, military personnel exchange or education programs, or the provision of health care to military personnel on a reciprocal basis;

(iii) International agreements and qualifying non-binding instruments that establish the terms of grant or other similar assistance, including in-kind assistance, financed with foreign assistance funds pursuant to the Foreign Assistance Act of 1961 (22 U.S.C. 2151 *et seq.*) or the Food for Peace Act (7 U.S.C. 1691 *et seq.*);

(iv) International agreements and qualifying non-binding instruments, such as project annexes and other similar instruments, for which the principal function is to establish technical details for the implementation of a specific project undertaken pursuant to another agreement or qualifying nonbinding instrument that has been published in accordance with 1 U.S.C. 112b(b)(1) or (2);

(v) International agreements and qualifying non-binding instruments that have been separately published by a depositary or other similar administrative body, except that the information described in § 181.8(a)(3) and (6) relating to such international agreements and qualifying non-binding instruments shall be made available to the public on the website of the Department of State in accordance with paragraph (c) of this section; and

(vi) any international agreements and qualifying non-binding instruments within one of the above categories that had not been published as of September 19, 2023, unless, in the case of such a non-binding instrument, the instrument is the subject of a written communication from the Chair or Ranking Member of either the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives to the Secretary in accordance with 1 U.S.C. 112b(k)(5)(A)(ii)(II).

(2) Pursuant to 1 U.S.C. 112a(b), any international agreements and qualifying non-binding instruments in the possession of the Department of State, other than those in paragraph (d)(1)(i) of this section, but not published will be made available upon request by the Department of State.

(3) Pursuant to 1 U.S.C. 112b(l)(1), nothing in the Act may be construed to authorize the withholding from disclosure to the public of any record if such disclosure is required by law.

§ 181.10 Definition of ''text''.

(a) In accordance with 1 U.S.C. 112b(k)(7), the term ''text'' with respect to an international agreement or qualifying non-binding instrument includes:

(1) Any annex, appendix, codicil, side agreement, side letter, or any document of similar purpose or function to the aforementioned, regardless of the title of the document, that is entered into contemporaneously and in conjunction with the international agreement or qualifying non-binding instrument; and

(2) Any implementing agreement or arrangement, or any document of similar purpose or function to the aforementioned regardless of the title of the document, that is entered into contemporaneously and in conjunction with the international agreement or qualifying non-binding instrument.

(b) 1 U.S.C. 112b(k)(7) further provides that, as used in this definition, the term ''contemporaneously and in conjunction with'':

(1) Shall be construed liberally; and

(2) May not be interpreted to require any action to have occurred simultaneously or on the same day.

Joshua L. Dorosin,

Deputy Legal Adviser, Department of State.

[FR Doc. 2023–21666 Filed 9–29–23; 8:45 am]

BILLING CODE 4710–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R02–OAR–2021–0871; FRL–11226–02–R2]

Air Plan Approval; New Jersey; Redesignation of the Warren County 1971 Sulfur Dioxide Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 15, 2021, the New Jersey Department of Environmental Protection (NJDEP) submitted a request for the Environmental Protection Agency (EPA) to approve the redesignation of the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (Warren County, New Jersey) from nonattainment to attainment for the 1971 Sulfur Dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). In conjunction with its redesignation request, NJDEP submitted a State Implementation Plan (SIP) revision containing a limited maintenance plan and its associated contingency measures for the Warren County 1971 SO_2 Nonattainment Area (Warren County SO_2 NAA) to ensure