

Dated: August 30, 2006.

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DEPARTMENT OF STATE

22 CFR Part 181

RIN 1400-AC21

[Public Notice: 5527]

Publication, Coordination, and Reporting of International Agreements: Amendments

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: The Department of State is updating the regulations implementing 1 U.S.C. 112a and 112b in order to reflect amendments to the statutes governing publication of U.S. international agreements and their transmittal to the Congress. It will not be publishing certain categories of international agreements in the compilation entitled "United States Treaties and Other International Agreements" or in the "Treaties and Other International Acts Series." Further, the regulations are being amended to reflect adjustments to certain internal procedures within the State Department on the reporting of international agreements to Congress. Finally, the Department is adding a new requirement concerning procedures for consultation with the Secretary of State in the negotiation and conclusion of international agreements. Where an international agreement could reasonably require for its implementation the issuance of a significant domestic regulatory action, agencies proposing the agreement are to consult in a timely manner with the Office of Management and Budget (OMB), and the Department of State should confirm that timely consultations were undertaken.

DATES: *Effective Date:* This rule is effective October 10, 2006.

FOR FURTHER INFORMATION CONTACT: John Kim, Assistant Legal Adviser for Treaty Affairs, Office of the Legal Adviser, Department of State, Washington, DC 20520, 202-647-1660, or at kimmjj@state.gov.

SUPPLEMENTARY INFORMATION: Two statutes set forth the Secretary's unique role and important responsibilities in the area of publishing, coordinating, and reporting international agreements.

Pursuant to 1 U.S.C. 112a, the Secretary of State is required to publish 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 The Secretary of State, however, may determine that certain categories of agreements should not be published if certain criteria are met. Any such determination must be published in the **Federal Register**.

Under the second statute, 1 U.S.C. 112b, the Secretary of State is required to transmit to the Congress the text of any international agreement other than a treaty to which the United States is a party as soon as practicable but no later than 60 days after it enters into force. Those agreements that the President determines should be classified are to be transmitted, not to Congress as a whole, but to the House Committee on International Relations (at that time called "the House Committee on Foreign Affairs") and to the Senate Foreign Relations Committee under an injunction of secrecy. The statute further recognizes the Secretary of State's special role in the negotiation and conclusion of all U.S. international agreements, providing that "[n]otwithstanding any other provision of law, an international agreement may not be signed or otherwise concluded on behalf of the United States without prior consultation with the Secretary of State. Such consultation may encompass a class of agreements rather than a particular agreement."

The Department of State has issued regulations to implement these statutory provisions. These regulations are codified in Part 181 of Chapter 22 of the Code of Federal Regulations (CFR). Congress has amended both 1 U.S.C. 112a and 1 U.S.C. 112b several times, most recently in section 7121 of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458 (Dec. 17, 2004). The State Department is amending sections of 22 CFR Part 181 in order to reflect (1) the changes made to 1 U.S.C. 112a and 112b in December 2004; (2) certain changes made to internal Departmental procedures; and (3) four additional categories of international agreements that meet the non-publication criteria of 1 U.S.C. 112a.

In addition, the Department is amending the procedures regarding the negotiation and conclusion of international agreements. These procedures are set forth in 22 CFR 181.4 and in the Circular 175 procedure

referenced therein. In particular, if a proposed international 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 consult in a timely manner with the OMB regarding such commitment. This amendment is aimed at ensuring that OMB is apprised of international commitments that may have a significant regulatory impact on domestic entities or persons prior to the negotiation or conclusion of the international agreement containing the commitment.

A proposed rule on these subjects was published in the **Federal Register** on May 18, 2006 (71 FR 28831), which contains a more detailed discussion. Only one comment was received on the proposed regulations. The comment supported the proposed amendment to the consultation procedures in 22 CFR 181.4(e) with respect to proposed international agreements that reasonably may result in a "significant regulatory action." The commenter expressed the view that the amendment to the regulations would ensure a greater level of transparency in the negotiation and conclusion of international agreements that may lead to significant regulatory impacts on domestic U.S. entities.

Further, the comment made two recommendations relating to the implementation of the amendment once it was finalized. First, the commenter said that agencies should be required to consult with OMB at the earliest possible stage in the discussions of a possible international agreement. Second, the commenter requested that the State Department require agencies to publish a short notice in the **Federal Register** when consultation has been initiated with OMB, asking for public comment where appropriate. In the commenter's view, such a notice would ensure that the public and other interested agencies are made aware of consultations with OMB, thereby fostering the transparency of an agency's development of international agreements.

As there has been no objection to the proposed rule, the State Department will promulgate the final rule without change. The Department nevertheless has considered the commenter's suggestions. With respect to the first suggestion, the Department believes that the term "timely" is sufficient to indicate the need for agencies to consult with OMB at an appropriate stage in the discussions concerning proposed international agreements. The

Department and OMB already have agreed to develop inter-agency procedures to best implement the final rule and ensure that OMB has a sufficient opportunity to be consulted prior to the authorization of the negotiation or conclusion of international agreements under these regulations. With respect to the second suggestion in the comment, the Department does not provide notices in the **Federal Register** of proposed negotiations of international agreements nor does it believe that such notices would be appropriate given the nature of the conduct of foreign relations and international negotiations. The time for public notice in the **Federal Register** is the occasion of the agency's rulemaking.

Finally, no comments were received concerning the other aspects of the State Department's proposed rule; therefore, the final rule will be published also without any change to those aspects. In particular, no comments were received with respect to the Department's determination that four additional categories of international agreements meet the criteria for non-publication in 1 U.S.C. 112a(b). Also, no comments were received with respect to adjustments to certain internal procedures within the State Department on the reporting of international agreements to Congress.

Regulatory Analysis

Administrative Procedure Act

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by Federal agencies that affect the public (5 U.S.C. 553), the Department is publishing these proposed regulations and inviting public comment.

Regulatory Flexibility Act/Executive Order 13272: Small Business

These proposed changes to the regulations are 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. 601–612, and Executive Order No. 13272, section 3(b).

The Small Business Regulatory Enforcement Fairness Act of 1996

These proposed regulations do not constitute a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. These regulations would not result in an annual effect on the economy of \$100 million or more; a major increase in

costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4, 109 Stat. 48, 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. These proposed regulations would not result in any such expenditure nor would it significantly or uniquely affect small governments.

Executive Orders 12372 and 13132: Federalism

These regulations would 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 would the regulations have federalism implications warranting the application of Executive Order No. 12372 and No. 13132.

Executive Order 12866: Regulatory Review

Because a portion of this proposed rule directly involves the participation of OMB, the Department of State has submitted it to OMB for its review.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulations 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 (PRA) (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. The Department of State has determined that this proposal contains no new collection of information requirements for the purposes of the PRA.

List of Subjects in 22 CFR Part 181

Treaties.

■ For the reasons set forth above, part 181 is amended as follows:

PART 181—COORDINATION, REPORTING AND PUBLICATION OF INTERNATIONAL AGREEMENTS

■ 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. § 181.2 is amended by:

■ A. Removing the third and fourth sentences of paragraph (a) (2);

■ B. Adding a new third sentence of paragraph (a) (2); and

■ C. Adding new paragraph (f).

The additions read as follows:

§ 181.2 Criteria.

(a) * * *

(2) * * * 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. * * *

(f) Notwithstanding the other provisions of this section, arrangements that constitute international agreements within the meaning of this section include

(1) Bilateral or multilateral counterterrorism agreements and

(2) Bilateral agreements with a country that is subject to a determination under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)).

■ 3. § 181.4 is amended in paragraph (e) as follows:

■ A. By designating the existing text as paragraph (e)(1); and

■ B. Adding a new paragraph (e)(2) to read as follows:

§ 181.4 Consultations with the Secretary of State.

* * * * *

(e)(1) * * *

(2) 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 arrangement 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.

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§ 181.7 [Amended]

■ 4. § 181.7 is amended as follows:

■ A. In paragraph (b): By removing “Assistant Secretary of State for Congressional Relations” and adding in its place “Assistant Legal Adviser for Treaty Affairs”; and removing “House Committee on Foreign Affairs” and adding in its place “House Committee on International Relations”.

■ B. In paragraph (c):

■ 1. By removing “, the negotiations, the effect of the agreement,” in the third sentence; and

■ 2. By removing, in the last sentence the phrase “Assistant Secretary of State for Congressional Relations” and adding in its place “Assistant Legal Adviser for Treaty Affairs”, and removing the phrase “House Committee on Foreign Affairs” and adding in its place “House Committee on International Relations”.

■ C. In paragraph (d), by removing “Assistant Secretary of State for Congressional Relations” and “Assistant Secretary for Congressional Relations” wherever each appears and adding in its place “Assistant Legal Adviser for Treaty Affairs”.

■ 5. § 181.8 is amended as follows by:

■ A. Adding paragraphs (a)(10) through (13);

■ B. Adding a sentence to the end of paragraph (b); and

■ C. Adding a new paragraph (d) to read as follows:

§ 181.8 Publication.

(a) * * *

(10) Bilateral agreements with other governments that apply to specific activities and programs financed with foreign assistance funds administered by the United States Agency for International Development pursuant to the Foreign Assistance Act, as amended, and the Agricultural Trade Development and Assistance Act of 1954, as amended;

(11) Letters of agreements and memoranda of understanding with other governments that apply to bilateral assistance for counter-narcotics and other anti-crime purposes furnished pursuant to the Foreign Assistance Act, as amended;

(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; and

(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; and

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

* * * * *

(d) The Assistant Legal Adviser for Treaty Affairs shall annually submit to Congress a report that contains an index of all international agreements, listed by country, date, title, and summary of each such agreement (including a description of the duration of activities under the agreement and the agreement itself), that the United States:

(1) Has signed, proclaimed, or with reference to which any other final formality has been executed, or that has been extended or otherwise modified, during the preceding calendar year; and

(2) Has not been published, or is not proposed to be published, in the compilation entitled “United States Treaties and Other International Agreements.”

■ 6. Add new § 181.9 to read as follows:

§ 181.9 Internet Web site publication.

The Office of the Assistant Legal Adviser for Treaty Affairs, with the cooperation of other bureaus in the Department, shall be responsible for making publicly available on the Internet Web site of the Department of State each treaty or international agreement proposed to be published in the compilation entitled “United States Treaties and Other International Agreements” not later than 180 days after the date on which the treaty or agreement enters into force.

Dated: August 21, 2006.

John J. Kim,

*Assistant Legal Adviser for Treaty Affairs,
Department of State.*

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DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1 and 602**

[TD 9286]

RIN 1545-BE91

Railroad Track Maintenance Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide rules

for claiming the railroad track maintenance credit under section 45G of the Internal Revenue Code for qualified railroad track maintenance expenditures paid or incurred by a Class II railroad or Class III railroad and other eligible taxpayers during the taxable year. These temporary regulations reflect changes to the law made by the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective September 8, 2006.

Applicability Date: For dates of applicability, see § 1.45G-1T(g).

FOR FURTHER INFORMATION CONTACT: Winston H. Douglas, (202) 622-3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed, and pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-2031. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 to provide regulations