SUBCHAPTER S—INTERNATIONAL AGREEMENTS

PART 181—COORDINATION, REPORTING AND PUBLICATION OF INTERNATIONAL AGREEMENTS

Sec.

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

SOURCE: 46 FR 35918, July 13, 1981, unless otherwise noted.

§ 181.1 Purpose and application.

(a) The purpose of this part is to implement the provisions of 1 U.S.C. 112a and 112b, popularly known as the Case-Zablocki Act (hereinafter ''the Act''), on the reporting to Congress, coordination with the Secretary of State and publication of international agreements. This part applies to all agencies of the U.S. Government whose responsibilities include the negotiation and conclusion of international agreements. This part does not, however, constitute a delegation by the Secretary of State of the authority to engage in such activites. 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 agreements and consultation by agencies with the Secretary of State with respect to proposed agreements—every agency of the 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 agreements concluded, will not give rise to a cause of action, and will not affect any public or private rights established by such agreements.

[46 FR 35918, July 13, 1981, as amended at 61 FR 7071, Feb. 26, 1996]

§ 181.2 Criteria.

(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, as well as within the meaning of 1 U.S.C. 112a, requiring the publication of international agreements. 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.

(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