

Ratification of the Kigali Amendment

Requirements & Procedures

Executive Order

President Biden directed the Secretary of State to prepare to transmit the Kigali Amendment to the Senate within 60 days of the Executive Order issued on January 27, 2021.

Importantly, President Biden has not directed that the amendment be sent to the Senate – just that it be prepared to be sent. Transmission to the Senate is not presently subject to a deadline; it could occur soon after the transmittal package is prepared or at some later date.

The State Department’s Circular No. 175 sets forth general rules for the negotiation of international agreements, but other than a review by the Assistant Legal Adviser for Treaty Affairs, pursuant to 11 FAM 725.7, all such rules would have been satisfied prior to the adoption of the Kigali Amendment in October 2016 during the Obama Administration.

Thus the 60-day deadline seems relatively easy to satisfy, notwithstanding any additions to the transmittal package, such as briefing documents relating to the American Innovation and Manufacturing Act of 2020. But, as noted, this leaves open the question of when the Biden Administration will transmit the amendment itself to the Senate.

Senate Committee on Foreign Relations

Upon receipt of an international agreement, the Senate refers the agreement and other supporting materials to the Committee on Foreign Relations. The Committee is not obliged to act further unless its chair so desires.

Treaties can languish before the Committee indefinitely; nothing resets at the end of each session of Congress. There are 37 agreements currently pending before the Committee on Foreign Relations, including one from the 1940s and several from the 1960s.

If the Foreign Relations Committee chooses to act, it typically convenes at least one Subcommittee hearing and one full Committee hearing, followed by a vote. The Committee can report out a treaty favorably, unfavorably, or without recommendation. The Subcommittee of jurisdiction is the Subcommittee on International Development, Multilateral Institutions, and International Economic, Energy and Environmental Policy.

The treaty is then placed on the Senate's Executive Calendar, as treaty business is considered in Executive Session, pursuant to Senate Rule XXXIX, which sets forth various procedural rules governing the Senate's ability to resolve into executive session.

Most often, once a treaty is placed on the Executive Calendar, the Senate agrees by unanimous consent to dispense with consideration of the treaty itself and instead proceed immediately to executive session and a vote on the resolution of ratification.

However, unanimous consent means a single objection can prevent swift consideration of a treaty. If there is such an objection, the Senate would need to resolve into executive session by a roll call vote, which typically involves significant delays.

While in Committee or on the Senate floor, the treaty may be subject to amendments (*i.e.*, reservations). However, Article 18 of the Montreal Protocol prohibits reservations. Given the United States is a party to the Montreal Protocol and thus subject to its provisions, this should serve to block Senate consideration of any amendments.

Under Article II of the U.S. Constitution, a two-thirds majority of those present is required for the Senate to provide advice and consent. The vote is not on the treaty itself but a resolution of ratification, which if approved then goes to the President for signature.

Secretary of State

Once the resolution of ratification is signed by the President, the Secretary of State then initiates a process whereby the instrument of ratification is deposited at the treaty secretariat or other designated receiver. At that point, and not before, "ratification" has occurred.