

1. On page 32877, column 3, correct the text of the **SUMMARY** paragraph to read as follows:

**SUMMARY:** The following policy and information provides clarification and guidance for all operator of turbojet airplanes who hold Operations Specifications (OpSpecs) (excluding foreign operators), Management Specifications (MSpecs), or a part 125 Letter of Deviation Authority, for establishing operators' method of ensuring that sufficient landing distance exists for safely making a full stop landing with an acceptable safety margin, on the runway to be used, in the conditions existing at the time of arrival, and with the deceleration means and airplane configuration to be used.

2. On page 32880, column 2, correct the text of the first full paragraph under the New Requirements heading to read as the following:

#### **New Requirements**

The FAA will soon be issuing mandatory OpSpec/MSpec C082, "Landing Performance Assessments After Departure" for all turbojet operators under parts 121, 125, (including holders of a part 125 Letter of Deviation Authority), 135, and 91 subpart K. This OpSpec/MSpec will allow operations based on provisions as set forth in this notice. If not currently in compliance, all turbojet operators shall be brought into compliance with this notice and the requirements of OpSpec/MSpec C082 no later than October 1, 2006. The FAA anticipates that operators will be required to submit their proposed procedures for compliance with this notice and OpSpec/MSpec to their POI no later than September 1, 2006. When the operator demonstrates the ability to comply with the C082 authorization for landing distance assessments, and has complied with the training, and training program requirements below, OpSpec/MSpec C082 should be issued. OpSpec/MSpec C082 will be available from the FAA by July 20, 2006.

3. Page 32881, column 1, correct the date in the first line of the Requirements paragraph from September 1, 2006 to October 1, 2006.

Issued in Washington, DC, on June 12, 2006.

**James J. Ballough,**

*Director, Flight Standards Service.*

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## **DEPARTMENT OF STATE**

### **22 CFR Part 97**

[Public Notice 5443]

**RIN 1400-AC19**

#### **Intercountry Adoption—Issuance of Hague Convention Certificates and Declarations in Convention Adoption Cases**

**AGENCY:** Department of State.

**ACTION:** Proposed Rule.

**SUMMARY:** The Department of State (the Department) is proposing new regulations to implement the certification and declaration provisions of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA) with respect to adoption and custody proceedings taking place in the United States. This proposed regulation would govern the application process for Hague Convention Certificates and Hague Convention Declarations in cases involving emigration of a child from the United States. It would also establish a process for seeking certification, for purposes of Article 23 of the Convention, that an adoption done in the United States following a grant of custody in a Convention country of origin was done in accordance with the Convention.

**DATES:** Comments must be received on or before August 15, 2006.

**ADDRESSES:** You may submit comments, identified by docket number State/AR-01/97, by one of the following methods (no duplicates, please):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Electronically: You may submit electronic comments to [adoptionregs@state.gov](mailto:adoptionregs@state.gov). Attachments must be in Microsoft Word.

- Mail: U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, (SA-29), 2201 C Street, NW., Washington, DC 20520.

- Courier: U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, (SA-29), 2201 C Street, NW., Washington, DC, 20520. (Because access to the Department of State is not readily available to private individuals without Federal Government identification, do not personally deliver comments to the Department.)

- Docket: Comments received before the close of the comment period will be available to the public, including information identifying the commenter. The Department will post comments on its public Web site at: <http://travel.state.gov>. They are also available for public inspection by calling Delilia Gibson-Martin at 202-736-9105 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Anna Mary Coburn at 202-736-9081, or send an e-mail to [adoptionregs@state.gov](mailto:adoptionregs@state.gov). Hearing- or speech-impaired persons may use the Telecommunications

Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1-800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction**

The Convention is a multilateral treaty that provides a framework for the adoption of children habitually resident in one country party to the Convention by persons habitually resident in another country party to the Convention. It establishes procedures to be followed in such adoption cases and imposes safeguards to protect the best interests of the children concerned. It provides for each country that is a party to the Convention to establish a Central Authority and permits the delegation of certain Central Authority functions to other entities, to the extent permitted by the law of the relevant country. With certain limited exceptions, Article 23 of the Convention requires all Convention parties to recognize adoptions that occur pursuant to the Convention, if the adoption is certified by the country of adoption as having been made in accordance with the Convention.

The U.S. implementing legislation for the Convention is the IAA, which establishes the U.S. Department of State as the Central Authority for the United States. For Convention adoptions involving the emigration of a child from the United States (outgoing cases), section 303(c) of the IAA gives the Department responsibility for issuing an official certification that the child has been adopted, or a declaration that custody for the purpose of adoption has been granted, in accordance with the Convention and the IAA. The IAA assigns to State courts with jurisdiction over matters of adoption, or custody for purposes of adoption, the responsibility for receiving and verifying documents required under the Convention, making certain determinations required of the country of origin by the Convention, and determining that the placement is in the best interests of the child. The IAA also addresses the delegation of Central Authority functions to entities other than the Department of State, providing for accreditation, temporary accreditation, approval, and operating under supervision as the principal ways in which a private entity can be authorized to perform tasks assigned to the Central Authority.

Separate regulations implement other aspects of the Convention and the IAA, such as the accreditation and approval of adoption service providers to perform adoption services in cases covered by the Convention (22 CFR 96), preservation of Convention records (22 CFR 98), and immigration procedures

for Convention adoption cases (e.g., visa regulations to appear at 22 CFR 42). Further background on the Convention and the IAA is provided in the in the Preamble to the Final Rule on the Accreditation and Approval of Agencies and Persons under the IAA, Section I and II, 71 FR 8064–8066 (February 15, 2006) and the Preamble to the Proposed Rule on the Accreditation of Agencies and Approval of Persons under the Intercountry Adoption Act of 2000, Sections III and IV, 68 FR 54065–54073 (September 15, 2003).

## II. The Proposed Rule

This proposed rule would establish the Department's procedures for application, adjudication, and issuance of Hague Convention Certificates and Hague Convention Declarations in outgoing cases. It also would establish a separate, discretionary, procedure pursuant to which the Department may certify that an incoming case finalized in the United States (i.e., a case in which custody was granted abroad but the adoption was done by a U.S. court) was done in accordance with the Convention. The Department anticipates that this latter authority will be used rarely, and only if an issue arises concerning recognition of the adoption by a foreign authority pursuant to Article 23 of the Convention.

### Definitions

Section 97.1 sets forth definitions used in this section that are specific to this regulation, and incorporates the definitions set forth in 22 CFR 96.2, the definitional section of the accreditation and approval regulation, for terms defined there.

The term *Adoption Court* is defined to mean the State court with jurisdiction over matters of adoption and of custody for purposes of adoption.

*U.S. authorized entity* and *foreign authorized entity* are shorthand forms to encompass the entities that may perform the case-specific Central Authority functions that may be delegated to authorized entities. In the United States, public domestic authorities may perform these Central Authority functions. In addition, private entities that have become accredited agencies, temporarily accredited agencies, or approved persons, as well as agencies operating under their supervision and responsibility as supervised providers, in accordance with the accreditation and approval standards at 22 CFR 96, are generally authorized to perform such Central Authority functions. However, the authority of private entities that are not accredited or temporarily accredited is limited when completing a home

study or a child background study. The Convention requires that home studies and child background studies be prepared under the responsibility of an accredited body or public domestic authority; correspondingly, the accreditation and approval standards at 22 CFR 96.53 provide for background studies in outgoing cases that are not prepared in the first instance by an accredited agency or temporarily accredited agency to be reviewed and approved by such an agency.

Convention countries may choose not to allow private entities to perform Central Authority functions; the definition of *foreign authorized entity* therefore includes the foreign Central Authority itself as well as any foreign accredited bodies or other public or private entities authorized under foreign law to perform the relevant Central Authority function in a Convention adoption case. The Web site of the Hague Conference on Private International Law, [www.hcch.net](http://www.hcch.net), lists the names of entities that each Convention country has so authorized. (Click on "Welcome," then, in the left hand column, "Conventions," then the 1993 Convention (No. 33), and then, in the right hand column, "Authorities.")

The terms *Hague Convention Certificate* and *Hague Convention Declaration* are defined as the documents the Secretary of State (the Secretary) will issue to attest that a child has been adopted or that custody of a child has been granted, respectively, in the United States in accordance with the Convention and the IAA. Consistent with the waiver authority provided in section 502 of the IAA, § 97.4(b) of the proposed regulation authorizes the Secretary to issue either document, appropriately modified, in the absence of compliance with the IAA, in the interests of justice or to prevent grave physical harm to a child. Section 97.4(b), unlike the other provisions of the rule, refers to the "Secretary of State" acting "personally." Accordingly, the authority to issue an appropriately modified Hague Adoption Certificate or Hague Custody Declaration may not be delegated.

### Application for a Hague Adoption Certificate or a Hague Custody Declaration in an Outgoing Convention Case

Section 97.2(a) of the regulation sets forth the procedural requirements for obtaining a Hague Adoption Certificate or Hague Custody Declaration in an outgoing case. Applicants must either be a party to the adoption or custody proceedings (i.e., adoptive or prospective adoptive parent(s) or the

child) or other applicants will have to demonstrate that the documents will be used to obtain a legal benefit or for purposes of a legal proceeding. The Department has discretion under the rule to determine whether to issue the documents to persons in the latter category, which is intended to encompass persons such as executors and heirs of the parties, who may need documentation for estate purposes. (Legal representatives acting directly on behalf of a parent or the child will be covered by the first category.) The Department believes this approach strikes an appropriate balance between protecting the privacy of participants in the adoption process while permitting discretionary and limited access to others who have a compelling need for the record.

Section 97.2(b) sets forth the documentary requirements for submitting an application for a Hague Adoption Certificate or Hague Custody Declaration in an outgoing case. The requirements include a completed application form and any required fee.

Section 97.2(b) also instructs applicants to submit an official copy of the adoption court's order finding that the child is adoptable and that the adoption or proposed adoption is in the child's best interests and granting the adoption or custody for purposes of adoption. These findings, which will be made by State courts in accordance with State law, are fundamental to any adoption.

In addition, the proposed regulation instructs applicants to provide an official copy of the adoption court's findings verifying, in substance, that the Convention and IAA requirements set forth in § 97.3 have been met. This can be done either in the final adoption or custody order or in a separate document. The qualifier "in substance" is intended to make clear that the regulation does not govern the precise words the court must use, but rather the substantive finding required. If the adoption court fails to verify compliance with one or more requirements set forth in § 97.3, the applicant may provide authenticated documentation showing compliance with the requirement(s) at issue and explaining why verification by the adoption court cannot be submitted. The Department expects that cases in which alternative proof of Convention compliance is necessary will be few; applicants will be expected to take all reasonable steps to obtain a court order addressing these requirements, which, in some cases, may require seeking a supplemental or amended order from the adoption court. The adoption court

is best placed to make these findings, and is specifically charged by the IAA to make nearly all of the findings required.

The Department has broad authority under section 303(a)(3) of the IAA to require the submission of any information concerning the case necessary to issue the Hague Adoption Certificate or Hague Custody Declaration or otherwise to carry out the duties of the United States Central Authority. Consistent with this, § 97.2(b)(4) indicates that the Department may, in its discretion, request additional documentation and information from the applicant. The Department anticipates using this authority principally when evidence provided pursuant to § 97.2(b)(1)–(3) is inadequate or otherwise raises a suspicion of noncompliance or if information becomes available to the Department independently that raises a question of compliance. Section 97.2(c) establishes the Department's authority to consider applications abandoned when such requested documentation or information is not provided within 120 days. This provision will facilitate the Department's recordkeeping and case-tracking efforts.

#### **Requirements Subject to Verification in an Outgoing Convention Case**

Section 97.3 sets forth the additional requirements that must be satisfied in order for the Department to conclude that an adoption or grant of custody for purposes of adoption has been made in compliance with the Convention and the IAA. These requirements do not replace State laws on adoption or custody. Rather, State law, unless directly inconsistent with the Convention and the IAA, still applies to Convention adoptions and is not preempted. This proposed rule also does not affect the application of other federal laws. Specifically, the Convention, the IAA, and this proposed rule do not affect the application of the Indian Child Welfare Act (ICWA), which applies to cases involving Native American children, or any other applicable federal laws covering adoptions.

The proposed rule does, however, add new Federal requirements derived directly from the Convention and the IAA, which must be met before the Department will issue a Hague Convention Certificate or a Hague Convention Declaration. Because State courts are best placed to determine compliance with these requirements in the context of adoption proceedings they adjudicate, and to enhance governmental efficiency, this proposed

rule effectively directs the prospective adoptive parent(s) to seek certain findings from the State court in the course of their adoption proceedings. Nearly all the findings involve subjects that the IAA explicitly assigns to the adoption court. The Department has limited the elements set forth in § 97.3 to those required in order to determine Convention and IAA compliance.

Paragraph (a) provides that an accredited agency, temporarily accredited agency, or a public domestic authority must complete or approve a child background study that meets the specific requirements of the Convention. This provision implements section 303(a)(1)(A) of the IAA and Convention Article 16(1). The term U.S. authorized entity is not used in this provision because child background studies prepared by an approved person or a non-accredited supervised provider—each of which is encompassed by “U.S. authorized entity”—or by an exempted provider, must subsequently be approved by an accredited agency, temporarily accredited agency, or public domestic authority in order to accommodate the Convention Article 22(5) requirement that such studies be prepared under the responsibility of the Central Authority, a public authority, or an accredited body and the accreditation standards in 22 CFR 96, which provide for child background studies in outgoing cases that are not prepared by an accredited or temporarily accredited agency to be approved by such an agency. Thus, in summary, to accommodate both the Convention and 22 CFR 96 and for the Department to attest to Hague and IAA compliance in an outgoing case, this regulation requires the child background study to be completed by an accredited agency, temporarily accredited agency, or public domestic authority or else subsequently be approved by such an entity. (Similarly, home studies in such cases must be prepared under the responsibility of a foreign Central Authority, foreign accredited body, or public foreign authority.)

Paragraph (b) provides that a U.S. authorized entity must conclude that the child is adoptable and, without revealing birthparent identities where prohibited by applicable State law, transmit to a foreign authorized entity the documentation on the child set forth in Convention Article 16(2), including a determination that the envisaged placement is in the best interests of the child. This provision also makes clear that the U.S. authorized entity's best interests determination must be made in reference to the home and child

background studies and must give due consideration to the child's upbringing and ethnic, religious and cultural background, as required by Convention Article 16. This paragraph also implements subparagraphs (A) and (C) of section 303(a)(1) of the IAA.

Paragraph (c) requires, consistent with section 303(a)(1)(B) of the IAA and the Convention's requirement that due consideration be given to domestic placement, that reasonable efforts be made to actively recruit and make a diligent search for a U.S. adoptive family for the child and that a timely U.S. adoptive placement could not be found. This paragraph cross-references § 96.54 of the accreditation and approval regulation, which specifies particular methods of making such a search, including disseminating information about the child in various ways, listing the child on an adoption exchange for 60 days, responding to inquiries, and providing the child's background study to potential U.S. adoptive parents. Section 96.54 also recognizes that there are some circumstances when the procedures it specifies are not appropriate; specifically, § 96.54 excludes from its scope cases in which the prospective adoption is by relatives, or the birth parent(s) have identified specific prospective adoptive parent(s), or in other special circumstances accepted by the adoption court. (For example, an adoption court might determine that such “special circumstances” existed if a public domestic authority followed alternative recruiting and search procedures provided for by State law or if the particular child required a speedier placement than could be found domestically.)

Paragraph (d) provides that a U.S. authorized entity must receive from a foreign authorized entity a home study prepared in accordance with applicable foreign law under the responsibility of a foreign Central Authority, foreign accredited body, or foreign public authority that includes the information required by Convention Articles 5(a) and (b) and 15 and by section 303(a)(2)(B) of the IAA. As with the child background study, Convention Article 22(5) restricts who may perform this function, and this restriction is reflected in the rule.

Paragraph (e) provides that the Central Authority or other competent authority of the receiving country must declare that the child will be authorized to enter and reside in the receiving country permanently or on the same basis as the adopting parent. This reflects the requirements set forth in Convention Article 5(c) and section

303(a)(2)(C)(i) of the IAA. Under the Convention, this determination must be made by a competent authority; this language, drawn from the IAA, recognizes that in some cases the foreign Central Authority itself may be the authority competent to make this determination.

Paragraph (f) addresses situations in which foreign law requires a foreign Central Authority or other foreign entity to consent to or approve an adoption before it goes forward. Convention Article 17(b) provides that, where required by the law of the receiving country, the country's Central Authority (or a foreign authorized entity other than the Central Authority to whom the relevant Central Authority function has been delegated) must consent to the adoption. Section 303(a)(2)(C)(ii) of the IAA requires submission to the U.S. adoption court of a declaration by the foreign "Central Authority (or other competent authority)" that it consents to the adoption, if such consent is necessary under the laws of the receiving country for the adoption to become final. To harmonize these provisions, paragraph (f) follows the IAA's approach of reading the Convention term "required" to mean "necessary for the adoption to become final" and recognizing that the consent of a competent authority other than a Central Authority might be required under foreign law for the adoption to become final. Paragraph (f) thus provides that a foreign authorized entity or competent authority must declare that it consents to the adoption if its consent is necessary under the law of the relevant foreign country for the adoption to become final.

Paragraphs (g) and (h), respectively, set forth the requirements of Convention Article 4(c), relating to the counseling and consent of guardians of a child, and Article 4(d), relating to the counseling and consent, where required, of the child. State law will continue to govern related issues, such as who must consent to the adoption and the particular requirements of proper legal form for consent, unless State law is in conflict with the Convention or the IAA, in which case the Convention or IAA provision would govern. Notably, consent of the birth mother, where required, may be given only after the birth of the child. State law allowing birth mother consent to be given before the birth of the child would be in direct conflict with the Convention and thus preempted. The Department welcomes comments from State, local, and tribal authorities on this point.

Paragraph (i) sets forth several duties of a U.S. authorized entity. A U.S.

authorized entity must ensure that prospective adoptive parents agree to the adoption, as required by Convention Article 17(a). A U.S. authorized entity and a foreign authorized entity must both agree that the adoption may proceed, as required by Convention Article 17(c). (Applicants for a Hague Adoption Certificate or Hague Custody Declaration will be asked to provide this information for use on the certificate/declaration, as required by Article 23.) A U.S. authorized entity also must take all appropriate measures to ensure that transfer of the child takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parent(s), and arrange to obtain permission for the child to leave the United States, as required by Convention Articles 19(2) and 18, respectively. Finally, a U.S. authorized entity must arrange to keep a foreign authorized entity informed about the adoption process and the measures taken to complete it, as well as about the progress of a placement if a probationary period is required; to return the home study and child background study to the authorities that forwarded them if the transfer of the child does not take place, and to be consulted in the event that a new placement or alternative long-term care for the child is needed, as required by Convention Articles 19(3), 20, and 21. These requirements are phrased in terms of the U.S. authorized entity "arranging" or "taking all appropriate measures" for them to occur because at the time of the adoption, the duties inherently will not yet have been performed. While section 303(b)(1)(B) of the IAA contemplates judicial review of compliance with Convention Articles 18 through 21, realistically the court will only be able to ensure that appropriate arrangements for future compliance are in place.

Paragraph (j) implements the "no contact" rule of Article 29 of the Convention, which is designed to reduce the opportunities for coercion, bribery, and child buying in the consent process. The Convention provides there can be no contact between the prospective adoptive parent(s) and the birthparent(s), or other persons caring for the child, until the appropriate authorities of the *receiving country* have determined the prospective adoptive parents are eligible and suitable to adopt and the appropriate authorities of the *country of origin* have determined that the child is adoptable and that, after due consideration to domestic placement, intercountry adoption is in the child's

best interests, and have ensured that all necessary guardian counseling and consent has occurred. This prohibition on prior contact applies unless the adoption takes place within a family or the contact is in compliance with conditions established by the appropriate authority of the country of origin. Such conditions may be established either by State law or by a public domestic authority acting within its jurisdiction. When conditions have not been established, such contacts may not occur because the Convention intends that such contacts be either barred or subject to regulation. (Note that this prohibition does not apply to contact by prospective adoptive parent(s) directly with the child.) The Department is particularly interested in receiving comments from State, local, and tribal authorities as to whether appropriate and sufficient conditions on contact between prospective adoptive parent(s) and birthparent(s) or other persons caring for the child are currently in place.

Paragraph (k) implements paragraphs (a) and (b) of Convention Article 32, which prohibit improper financial or other gain in relation to adoption activities and permit only costs and expenses (including reasonable professional fees) to be charged or paid.

Other requirements of the Convention need not be specifically verified by the court, either because they are not part of the process for an individual adoption case, or because existing law will address them adequately. For example, Convention Article 32(c) provides that directors, administrators and employees of adoption-related entities may not receive unreasonably high remuneration. The accreditation and approval regulations address unreasonable remuneration of private bodies (22 CFR 96.34(d)) and we have no reason to believe that the remuneration of public employees would be considered "unreasonably high."

#### **Issuance of a Hague Adoption Certificate or a Hague Custody Declaration in an Outgoing Convention Case**

Section 97.4(a) provides that the Department shall issue a Hague Adoption Certificate or a Hague Custody Declaration if the Department, in its discretion, is satisfied that the adoption or grant of custody was made in compliance with the Convention and IAA. Thus, even if an applicant provides all information required by § 97.2, it is within the Department's discretion to deny the application if the Department is not satisfied that the

Convention and IAA were complied with. This provision is consistent with section 303(c) of the IAA, which provides that the Secretary shall issue such a document upon "verification as necessary" of the information required to establish Convention and IAA compliance.

Section 97.4(b) implements the Secretary's authority pursuant to section 502(b) of the IAA, which permits the Secretary, personally, to the extent consistent with the Convention, to waive requirements of the IAA otherwise applicable or any regulations promulgated thereunder in the interests of justice or to prevent grave physical harm to a child. This regulation therefore permits the Secretary personally to authorize issuance of an appropriately modified Hague Adoption Certificate or Hague Custody Declaration attesting to Convention compliance in appropriate circumstances even if applicable IAA requirements have not been met. The Department anticipates that this exceptional, and discretionary, authority will only be exercised in extremely rare circumstances and only where foreign recognition of a Convention-compliant adoption is appropriate. As noted previously, this authority may not be delegated.

#### **Certification of Hague Convention Compliance in an Incoming Convention Case Where Adoption Occurs in the United States**

Section 97.5 is meant to address those cases in which custody for the purposes of adoption was granted to U.S. prospective adoptive parents by a competent authority in the child's country of origin, but the adoption occurs in the United States. In such cases, at the time a child receives an IR-4 visa, prospective adoptive parents will receive, pursuant to section 301(a) of the IAA and visa regulations that will be published in 22 CFR 42, a certificate indicating that legal custody has been granted for purposes of emigration and adoption, pursuant to the Convention and the IAA. Section 301(c) of the IAA requires such a certificate in order for a State court to finalize the adoption in the United States. The certification envisioned by Convention Article 23, however, is a certification by the country of *adoption* that the *adoption* was made in accordance with the Convention. It is therefore conceivable that the custody certificate issued by the consular officer, coupled with the State court order, would be inadequate to obtain recognition of the adoption outside the United States pursuant to Convention Article 23. In such a case,

U.S. certification of Convention compliance following the U.S. adoption may be required. This second certification is not required, however, for the adoption to be recognized in the United States or for the child to be documented as a U.S. citizen. (Section 97.5(a) is not intended to address cases in which adoption is granted in the foreign country, an IR-3 visa is issued, and parent(s) later choose to re-adopt in the United States even though such a re-adoption is not required for recognition or citizenship purposes.)

Section 97.5(b) sets forth the documentation that must be submitted to the Department in order to seek such a certification. It includes a copy of the certificate issued by a consular officer pursuant to applicable visa regulations certifying that legal custody for the purposes of emigration and adoption was granted in the Convention country pursuant to the Convention and the IAA, an official copy of the adoption court order granting the adoption, a signed statement explaining the need for such a certification, and any additional information or documentation the Department may request in its discretion.

The proposed regulation requires a statement of need because the Department anticipates that this certification will only be required in very few cases. A State court's adoption order should be recognized within the United States; thus, it is only if the adoptive family leaves the United States that recognition could potentially be an issue, and even then we have no specific information to indicate that U.S. adoption orders are not normally recognized abroad.

Section 97.5(c) mirrors § 97.2(c), authorizing the Department to consider such a request abandoned if documentation and information is not provided within 120 days of a request. Section 97.5(d) gives the Department authority to issue the requested certification if satisfied that the adoption was made in compliance with the Convention. The Secretary also has authority to decline issuance for any reason, including that the requestor did not establish a valid need for the certification. Although any person may request such a certification, requestors who are not parties to the adoption must, in addition to the requirements of § 97.5(b), demonstrate that issuance of such a certification would be to obtain a legal benefit or for purposes of a legal proceeding.

## **Regulatory Review**

### *A. Administrative Procedures Act*

This rule, through which the Department provides for implementation of the Convention, which focuses on issuance of documents to facilitate cross-border recognition of adoptions done under the Convention, involves a foreign affairs function of the United States and therefore pursuant to 5 U.S.C. 553(a)(1) is not subject to the procedures required by 5 U.S.C. 553 and 554. Nonetheless, the Department is publishing this proposed rule and inviting public comment. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable.

### *B. Regulatory Flexibility Act/Executive Order 13272: Small Business*

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601-612, and Executive Order 13272, Section 3(b), the Department of State has evaluated the effects of this proposed action on small entities and has determined and hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

### *C. Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not 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, Pub. L. 104-121. The rule would not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### *D. The Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Pub. L. 104-4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement, including cost-benefit and other analyses, 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. Section 4 of UFMA, 2 U.S.C. 1503,

excludes regulations necessary for implementation of treaty obligations. This proposed regulation falls within this exclusion because it would implement the Convention. In any event, this rule would not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year. Moreover, because this rule would not significantly or uniquely affect small governments, section 203 of the UFMA, 2 U.S.C. 1533, does not require preparation of a small government agency plan in connection with it.

#### *E. Executive Order 13132: Federalism*

A rule has federalism implications under Executive Order 13132 if it has 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. This regulation will not have such effects, and therefore does not have sufficient federalism implications to require consultations or to warrant the preparation of a federalism summary impact statement under section 6 of Executive Order 13132.

The Convention and the IAA do, however, address issues that previously had been regulated primarily at the State level, as discussed in the preamble to the proposed rule on accreditation and approval of agencies and persons, appearing at 68 Fed. Reg. 54064, 54069–54070. In recognition of this fact, section 503(a) of the IAA contains a specific provision limiting preemption of State law to those State law provisions inconsistent with the Convention or the IAA, and only to the extent of the inconsistency. These regulations do not create new federalism implications beyond those created by the IAA and the Convention, and the Department has been careful in these regulations to defer to State authorities whenever possible consistent with Convention and IAA mandates. As with the regulations on accreditation and approval, the Department welcomes comments from State and local agencies and tribal governments on the proposed regulations. We also envision significant outreach and consultation with appropriate State authorities in the ultimate implementation of any regulation on this topic.

#### *F. Executive Order 12866: Regulatory Review*

This rule, through which the Department provides for implementation of the Convention,

which focuses on issuance of documents to facilitate cross-border recognition of adoptions done under the Convention, pertains to a foreign affairs function of the United States; therefore, pursuant to section 3(d)(2) of the Executive Order 12866, this proposed rule is not subject to the review procedures set forth in Executive Order 12866. In addition, the Department is exempt from Executive Order 12866 except to the extent it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. Nonetheless, the Department of State has reviewed this proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has provided it to OMB for comment.

#### *G. Executive Order 12988: Civil Justice Reform*

The Department has reviewed this proposed regulation 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 Department has made every reasonable effort to ensure compliance with the requirements in Executive Order 12988.

#### *H. The Paperwork Reduction Act (PRA) of 1995*

Under the Paperwork Reduction Act (PRA), 42 U.S.C. 3501 *et seq.*, agencies are generally required to submit to OMB for review and approval information collection requirements imposed on “persons” as defined in the PRA. Section 503(c) of the IAA, however, exempts from the PRA any information collection “for purposes of sections 104, 202(b)(4), and 303(d)” of the IAA “or for use as a Convention record as defined” in the IAA. Convention record is defined in section 3(11) of the IAA to mean “any item, collection, or grouping of information contained in an electronic or physical document, an electronic collection of data, a photograph, an audio or video tape, or any other information storage medium of any type whatever that contains information about a specific past, current, or prospective Convention adoption (regardless of whether the adoption was made final) that has been preserved in accordance with section 401(a) by the Secretary of State or the Attorney General.” Information collections imposed on persons pursuant to this rule would relate directly to specific Convention adoptions (whether final or not), insofar as collections would be used by the Department in its determination of

whether a Convention adoption, or a grant of custody for purposes of a Convention adoption, has been conducted in accordance with the Convention and the IAA. Upon receipt, these information collections would be subject to the preservation requirements set forth in 22 CFR 98 to implement section 401(a) of the IAA.

Accordingly, the Department has concluded that the PRA would not apply to information collected from the public under this rule, for the purpose of determining entitlement to a Hague Adoption Certificate or Hague Custody Declaration, or a certification of Convention compliance pursuant to § 97.5, because such documents would be collected for use as Convention records.

The Department intends, nonetheless, to consider carefully how to minimize the burden on the public of information collections contained in this rule as such collections, in particular the required application form, are developed.

#### **List of Subjects in 22 CFR Part 97**

Adoption and foster care, International agreements, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to add new part 97 to title 22 of the CFR, chapter I, subchapter J, to read as follows:

#### **PART 97—ISSUANCE OF HAGUE CONVENTION CERTIFICATES AND DECLARATIONS IN CONVENTION ADOPTION CASES**

Sec.

- 97.1 Definitions.
- 97.2 Application for a Hague Adoption Certificate or a Hague Custody Declaration in an Outgoing Convention Case.
- 97.3 Requirements Subject to Verification in an Outgoing Convention Case.
- 97.4 Issuance of a Hague Adoption Certificate or a Hague Custody Declaration in an Outgoing Convention Case.
- 97.5 Certification of Hague Convention Compliance in an Incoming Convention Case where Final Adoption Occurs in the United States.
- 97.6–97.7 [Reserved].

**Authority:** Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at The Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998); 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954.

#### **§ 97.1 Definitions.**

As used in this part:  
(a) *Adoption Court* means the State court with jurisdiction over the

adoption or the grant of custody for purpose of adoption.

(b) *U.S. Authorized Entity* means a public domestic authority or an agency or person that is accredited or temporarily accredited or approved by an accrediting entity pursuant to 22 CFR 96, or a supervised provider acting under the supervision and responsibility of an accredited agency or temporarily accredited agency or approved person.

(c) *Foreign Authorized Entity* means a foreign Central Authority or an accredited body or entity other than the Central Authority authorized by the relevant foreign country to perform Central Authority functions in a Convention adoption case.

(d) *Hague Adoption Certificate* means a certificate issued by the Secretary certifying that a child has been adopted in the United States in accordance with the Convention and, except as provided in § 97.4(b), the IAA.

(e) *Hague Custody Declaration* means a declaration issued by the Secretary declaring that custody of a child for purposes of adoption has been granted in the United States in accordance with the Convention and, except as provided in § 97.4(b), the IAA.

(f) Terms defined in 22 CFR 96.2 have the meaning given to them therein.

**§ 97.2 Application for a Hague Adoption Certificate or a Hague Custody Declaration in an Outgoing Convention Case.**

(a) Any party to an outgoing Convention adoption or custody proceeding may apply to the Secretary for a Hague Adoption Certificate or a Hague Custody Declaration. Any other interested person may also make such application, but such application will not be processed unless such applicant demonstrates that a Hague Adoption Certificate or Hague Custody Declaration is needed to obtain a legal benefit or for purposes of a legal proceeding, as determined by the Secretary in the Secretary's discretion.

(b) Applicants for a Hague Adoption Certificate or Hague Custody Declaration shall submit to the Secretary:

(1) A completed application form in such form as the Secretary may prescribe, with any required fee;

(2) An official copy of the order of the adoption court finding that the child is adoptable and that the adoption or proposed adoption is in the child's best interests and granting the adoption or custody for purposes of adoption;

(3) An official copy of the adoption court's findings (either in the order granting the adoption or custody for purposes of adoption or separately)

verifying, in substance, that each of the requirements of § 97.3 has been complied with or, if the adoption court has not verified compliance with a particular requirement in § 97.3, authenticated documentation showing that such requirement nevertheless has been met and a written explanation of why the adoption court's verification of compliance with the requirement cannot be submitted; and

(4) Such additional documentation and information as the Secretary may request at the Secretary's discretion.

(c) If the applicant fails to submit all of the documentation and information required pursuant to paragraph (b)(4) of this section within 120 days of the Secretary's request, the Secretary may consider the application abandoned.

**§ 97.3 Requirements Subject to Verification in an Outgoing Convention Case.**

(a) *Preparation of Child Background Study.* An accredited agency, temporarily accredited agency, or public domestic authority must complete or approve a child background study that includes information about the child's identity, adoptability, background, social environment, family history, medical history (including that of the child's family), and any special needs of the child.

(b) *Transmission of Child Data.* A U.S. authorized entity must conclude that the child is adoptable and, without revealing the identity of the birth mother or the birth father if these identities may not be disclosed under applicable State law, transmit to a foreign authorized entity the background study, proof that the necessary consents have been obtained, and the reason for its determination that the proposed placement is in the child's best interests, based on the home study and child background study and giving due consideration to the child's upbringing and his or her ethnic, religious, and cultural background.

(c) *Reasonable Efforts to Find Domestic Placement.* Reasonable efforts consistent with 22 CFR 96.54 must be made to actively recruit and make a diligent search for prospective adoptive parent(s) to adopt the child in the United States and a timely adoptive placement in the United States not found.

(d) *Preparation and Transmission of Home Study.* A U.S. authorized entity must receive from a foreign authorized entity a home study on the prospective adoptive parent(s) prepared in accordance with the laws of the receiving country, under the responsibility of a foreign Central

Authority, foreign accredited body, or public foreign authority, that includes:

(1) Information on the prospective adoptive parent(s)' identity, eligibility, and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of the children for whom they would be qualified to care;

(2) Confirmation that a competent authority has determined that the prospective adoptive parent(s) are eligible and suited to adopt and has ensured that the prospective adoptive parent(s) have been counseled as necessary; and

(3) The results of a criminal background check.

(e) *Authorization to Enter.* The Central Authority or other competent authority of the receiving country must declare that the child will be authorized to enter and reside in the receiving country permanently or on the same basis as the adopting parent(s).

(f) *Consent by Foreign Authorized Entity.* A foreign authorized entity or competent authority must declare that it consents to the adoption, if its consent is necessary under the law of the relevant foreign country for the adoption to become final.

(g) *Guardian Counseling and Consent.* Each person, institution, and authority other than the child whose consent is necessary for the adoption must be counseled as necessary and duly informed of the effects of the consent (including whether or not an adoption will terminate the legal relationship between the child and his or her family of origin); must freely give consent expressed or evidenced in writing in the required legal form without any inducement by compensation of any kind; and consent must not have been subsequently withdrawn. If the consent of the mother is required, it may be given only after the birth of the child.

(h) *Child Counseling and Consent.* As appropriate in light of the child's age and maturity, the child must be counseled and informed of the effects of the adoption and the child's views must be considered. If the child's consent is required, the child must also be counseled and informed of the effects of granting consent, and must freely give consent expressed or evidenced in writing in the required legal form without any inducement by compensation of any kind.

(i) *Authorized Entity Duties.* A U.S. authorized entity must:

(1) Ensure that the prospective adoptive parent(s) agree to the adoption;

(2) Agree, together with a foreign authorized entity, that the adoption may proceed;

(3) Take all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive parent(s) or the prospective adoptive parent(s), and arrange to obtain permission for the child to leave the United States; and

(4) Arrange to keep a foreign authorized entity informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required; to return the home study and the child background study to the authorities that forwarded them if the transfer of the child does not take place; and to be consulted in the event a new placement or alternative long-term care for the child is required.

(j) *Contacts.* Unless the child is being adopted by a relative, there may be no contact between the prospective adoptive parent(s) and the child's birthparent(s) or any other person who has care of the child prior to the competent authority's determination that the prospective adoptive parent(s) are eligible and suited to adopt and the adoption court's determinations that the child is adoptable, that the requirements in paragraphs (c) and (g) of this section have been met, and that an intercountry adoption is in the child's best interests, *provided that* this prohibition on contacts shall not apply if the relevant State or public domestic authority has established conditions under which such contact may occur and any such contact occurred in accordance with such conditions.

(k) *Improper financial gain.* No one may derive improper financial or other gain from an activity related to the adoption, and only costs and expenses (including reasonable professional fees of persons involved in the adoption) may be charged or paid.

**§ 97.4 Issuance of a Hague Adoption Certificate or a Hague Custody Declaration in an Outgoing Convention Case.**

(a) The Secretary shall issue a Hague Adoption Certificate or a Hague Custody Declaration if the Secretary, in the Secretary's discretion, is satisfied that the adoption or grant of custody was made in compliance with the Convention and the IAA.

(b) If compliance with the Convention can be certified but it is not possible to certify compliance with the IAA, the Secretary personally may authorize issuance of an appropriately modified Hague Adoption Certificate or Hague

Custody Declaration, in the interests of justice or to prevent grave physical harm to the child.

**§ 97.5 Certification of Hague Convention Compliance in an Incoming Convention Case where Adoption Occurs in the United States.**

(a) Any person may request the Secretary to certify that an incoming Convention adoption finalized in the United States was done in accordance with the Convention.

(b) Persons seeking such a certification must submit the following documentation:

(1) A copy of a Hague Convention Certificate issued by a consular officer pursuant to applicable visa regulations certifying that legal custody of the child has been granted to the U.S. citizen parent for purposes of adoption;

(2) An official copy of the adoption court's order granting the final adoption;

(3) A signed statement explaining the need for such a certification; and

(4) Such additional documentation and information as the Secretary may request at the Secretary's discretion.

(c) If a person seeking the certification described in paragraph (a) of this section fails to submit all the documentation and information required pursuant to paragraph (b)(4) of this section within 120 days of the Secretary's request, the Department may consider the request abandoned.

(d) The Secretary may issue the certification if the Secretary, in the Secretary's discretion, is satisfied that the adoption was made in compliance with the Convention. The Secretary may decline to issue a certification, including to a party to the adoption, in the Secretary's discretion. A certification will not be issued to a non-party requestor unless the requestor demonstrates that the certification is needed to obtain a legal benefit or for purposes of a legal proceeding, as determined by the Secretary in the Secretary's discretion.

**§§ 97.6–97.7 [Reserved].**

Dated: June 9, 2006.

**Maura A. Harty,**

*Assistant Secretary, Bureau of Consular Affairs, Department of State.*

[FR Doc. E6–9507 Filed 6–15–06; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2006–0379; FRL–8184–4]

**Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Reasonably Available Control Technology Requirements for Volatile Organic Compounds and Nitrogen Oxides**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to remove the limited status of its approval of the Commonwealth of Pennsylvania's State Implementation Plan (SIP) revision that requires all major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) to implement reasonably available control technology (RACT). EPA is proposing to convert its limited approval of Pennsylvania's VOC and NO<sub>x</sub> RACT regulations to full approval because EPA has approved or is currently conducting rulemaking to approve all of the case-by-case RACT determinations submitted by Pennsylvania for the affected sources. In prior final rules, EPA has previously fully approved Pennsylvania's VOC and NO<sub>x</sub> RACT regulations for the Philadelphia-Wilmington-Trenton, and Pittsburgh-Beaver Valley areas. EPA is now proposing to convert its limited approval of Pennsylvania's VOC and NO<sub>x</sub> RACT regulations as they apply in the remainder of the Commonwealth to full approval because EPA has approved or is currently conducting rulemaking to approve all of the case-by-case RACT determinations submitted by Pennsylvania for the affected sources in the remainder of the Commonwealth. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the remainder of the State, outside of the Pittsburgh and Philadelphia areas; or (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions. This action is being taken under the Clean Air Act (CAA or the Act).

**DATES:** Written comments must be received on or before July 17, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–