

## § 97.5

## 22 CFR Ch. I (4–1–25 Edition)

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 final adoption occurs in the United States.**

(a) Once the Convention has entered into force for the United States, any person may request the Secretary to certify that a Convention adoption in an incoming case 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 the certificate issued by a consular officer pursuant to 22 CFR 42.24(j) certifying that the granting of custody of the child has occurred in compliance with the Convention;

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

(3) 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) 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.

(e) A State court's final adoption decree, when based upon the certificate issued by a consular officer pursuant to 22 CFR 42.24(j), certifying that the grant of custody of the child has occurred in compliance with the Convention, or upon its determination that the requirements of Article 17 of the Convention have been met constitutes the certification of the adoption under Article 23 of the Convention.

### **§§ 97.6–97.7 [Reserved]**

## **PART 98—INTERCOUNTRY ADOPTION—CONVENTION RECORD PRESERVATION**

Sec.

98.1 Definitions.

98.2 Preservation of Convention records.

**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.

**SOURCE:** 71 FR 8164, Feb. 15, 2006, unless otherwise noted.

### **§ 98.1 Definitions.**

As used in this part:

(a) Convention means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993.

(b) Convention record means any item, collection, or grouping of information contained in an electronic or physical document, an electronic collection of data (including the information contained in the Case Registry), 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 adoption covered by the Convention (regardless of whether the adoption was made final) that has been generated or received by the Secretary or the Department of Homeland Security (DHS). Convention record includes a record, generated or

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received by the Secretary or DHS, about a specific adoption case involving two Convention countries other than the United States in connection with which the Secretary or DHS performs a Central Authority function.

(c) Such other terms as are defined in 22 CFR 96.2 shall have the meaning given to them therein.

**§ 98.2 Preservation of Convention records.**

Once the Convention has entered into force for the United States, the Secretary and DHS will preserve, or require the preservation of, Convention records for a period of not less than 75 years. For Convention records involving a child who is immigrating to the United States and Convention records involving a child who is emigrating from the United States, the 75-year period shall start on the date that the Secretary or DHS generates or receives the first Convention record related to the adoption of the child. For an intercountry adoption or placement for adoption involving two Convention countries other than the United States, the 75-year period shall start on the date that the Secretary or DHS generates or receives the first Convention record in connection with the performance of a Central Authority function.

**PART 99—REPORTING ON CONVENTION AND NON-CONVENTION ADOPTIONS OF EMIGRATING CHILDREN**

Sec.

99.1 Definitions.

99.2 Reporting requirements for adoption cases involving children emigrating from the United States.

99.3 [Reserved]

**AUTHORITY:** The 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)); The Intercountry Adoption Act of 2000, 42 U.S.C. 14901-14954.

**SOURCE:** 72 FR 9854, Mar. 6, 2007, unless otherwise noted.

**§ 99.1 Definitions.**

As used in this part, the term:

(a) *Convention* means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993.

(b) Such other terms as are defined in 22 CFR 96.2 shall have the meaning given to them therein.

**§ 99.2 Reporting requirements for adoption cases involving children emigrating from the United States.**

(a) Once the Convention has entered into force for the United States, an agency (including an accredited agency and temporarily accredited agency), person (including an approved person), public domestic authority, or other adoption service provider providing adoption services in a case involving the emigration of a child from the United States must report information to the Secretary in accordance with this section if it is identified as the reporting provider in accordance with paragraph (b) of this section.

(b) In a Convention case in which an accredited agency, temporarily accredited agency, or approved person is providing adoption services, the primary provider is the reporting provider. In any other Convention case, or in a non-Convention case, the reporting provider is the agency, person, public domestic authority, or other adoption service provider that is providing adoption services in the case, if it is the only provider of adoption services. If there is more than one provider of adoption services in a non-Convention case, the reporting provider is the one that has child placement responsibility, as evidenced by the following factors:

(1) Entering into placement contracts with prospective adoptive parent(s) to provide child referral and placement;

(2) Accepting custody from a birthparent or other legal guardian for the purpose of placement for adoption;

(3) Assuming responsibility for liaison with a foreign government or its designees with regard to arranging an adoption; or

(4) Receiving information from, or sending information to a foreign country about a child that is under consideration for adoption.

(c) A reporting provider, as identified in paragraph (b) of this section, must