PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007 is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ANM CO, E5 Springfield, CO [New]

Springfield Municipal Airport, CO
(Lat. 37°27′31″ N., long. 103°37′05″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Springfield Municipal Airport; that airspace extending upward from 1,200 feet above the surface beginning at TOBE VORTAC, thence north along V–169 to lat. 38°34′00″ N., thence to lat. 38°34′00″ N., long. 102°00′00″ W., thence to lat. 36°30′00″ N., long. 102°00′00″ W., thence west on lat. 36°30′00″ N. to V–81, thence northwest along V–81 to point of beginning.

* * * * *

Issued in Seattle, Washington, on October 17, 2007.

Clark Desing,

Manager, System Support Group, Western Service Center.

[FR Doc. E7–21133 Filed 10–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 5976]

RIN 1400–AC40

Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Consular Officer Procedures in Convention Cases

AGENCY: Department of State.

ACTION: Final Rule.

SUMMARY: This rule amends Department of State regulations to provide for intercountry adoptions that will occur pursuant to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention) and the Intercountry Adoption Act of 2000 (IAA). This rule addresses consular officer processing of immigration petitions, visas, and Convention certificates in cases of children immigrating to the United States in connection with an adoption covered by the Convention.

EFFECTIVE DATE: This rule is effective October 30, 2007. Information about the date the Convention will enter into force is provided in 22 CFR 96.17.

FOR FURTHER INFORMATION CONTACT: Barbara J. Kennedy, Legislation and Regulations Division, Visa Services, United States Department of State, 2401 E Street, NW., Room L–603, Washington, DC 20520–0106; telephone 202–663–1206 or e-mail *KennedyBJ@state.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (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 at issue. It also provides for recognition of adoptions that occur pursuant to the Convention. In the United States, the implementing legislation for the Hague Convention is the Intercountry Adoption Act of 2000 (IAA). To implement the Convention, the IAA makes two significant changes to the Immigration and Nationality Act (INA): (1) It creates a new definition of ''child'' applicable in Convention adoption cases, found at INA 101(b)(1)(G), that roughly parallels the current definition of ''child'' in INA 101(b)(1)(F) with respect to an orphan, but that applies only to children being adopted from Convention countries. (2) It incorporates Hague procedures into the immigration process for children covered by INA 101(b)(1)(G), most directly by precluding approval of an immigration petition under this classification until the Department has certified that the child was adopted (or legal custody was granted for purposes of emigration and adoption) in accordance with the Convention and the IAA. Separately, section 301 of the IAA requires all Federal, State, and local domestic entities to recognize adoptions or grants of legal custody that have been so certified by the Department.

On October 4, 2007, the Department of Homeland Security (DHS) published in the **Federal Register** at 72 FR 56832 an interim rule on ''Classification of aliens as children of United States citizens based on intercountry adoptions under the Hague Convention'' (8 CFR parts 103, 204 and 213a) (''DHS Rule''). That rule governs the adjudication of Forms I–800A (relating to the suitability of prospective adoptive parents for intercountry adoption under the Convention) and Forms I–800 (relating to the classification of a Convention adoptee as the child of the adoptive parent(s) for purposes of the immigration and nationality laws of the United States). Additional regulations implement other aspects of the Convention and the IAA, such as those on the accreditation/approval of adoption service providers to perform adoption services in cases covered by the Convention (22 CFR part 96), the preservation of records (22 CFR part 98), and certificate issuance with respect to United States court proceedings (22 CFR part 97). Further background on the Convention and the IAA is provided in the Preamble to the Final Rule on the Accreditation of Agencies and Approval of Persons under the Intercountry Adoption Act of 2000, Sections III and IV, 71 FR 8064–8066 (February 15, 2006).

Discussion of Comments on the Proposed Rule

This section provides a discussion of the comments received by the Department of State on the proposed rule.

1. *Comment:* Commenters requested elaboration of the operational component of this rule, including the mechanics of how the applications for petition approval and visa eligibility will be submitted. Specifically, who completes and submits the petition to the consular officer and at what stage in the process? Also, will it be possible for adoption service providers to submit petitions abroad, with required documentation and fees, on behalf of prospective adoptive parents?

Response: Once the Form I–800A, Application for Determination of Suitability to Adopt a Child from a Convention Country, has been approved, a Form I–800, Petition to Classify Convention Adoptee as Immediate Relative, may be submitted either to DHS or to the consular officer, as under the current procedure in immigration cases involving orphan adoption. The DHS Rule, at 8 CFR 204.308, indicates that the proper filing location for Form I–800A and Form I–800 will be specified on the instructions for each form. The Supplementary Information, at 72 FR 56841–42, states that DHS anticipates that the filing process for Convention cases will be

similar to the process for orphan cases. The Form I–800A will always be filed in the United States with U.S. Citizenship and Immigration Services (USCIS). The Form I–800 may also be filed with USCIS, either at a Stateside office, or abroad, if the prospective adoptive parent(s) live abroad and USCIS has an office in the country in which they live. They may file the Form I–800 with a visa-issuing post if (a) they are physically present within the territory of the visa-issuing post when they file the Form I–800, and (b) either there is no USCIS office in that country or that USCIS office in country has delegated its authority to accept the filing of Forms I–800 to the visa-issuing post. The DHS Rule has no provision for the filing of the petition abroad when the prospective adoptive parents are physically present in the United States. As soon as the Form I–800 has been provisionally approved, however, the Form I–800 would generally be forwarded to the visa-issuing post for final approval once the adoption is completed. 8 CFR 204.313(g)(2).

As for the visa application, there are no absolute requirements for appearance at a consular post and the signing of the application until the visa interview, which would generally not be practicable until after the adoption has occurred. The unsigned visa application, with supporting documents and fees, may be filed with a consular officer by an adoption service provider, on behalf of prospective adoptive parents, if not present, so that the application may be initially reviewed.

2. *Comment:* One commenter requested further elaboration of the provisional approval process, especially regarding when the provisional approval will occur and what information will be required for the provisional approval determination.

Response: The DHS Rule explains much of this process. The basic steps in the provisional approval process are summarized as follows.

Pursuant to the DHS Rule, the prospective adoptive parent(s) file Form 1–800A with the United States Citizenship and Immigration Service (USCIS), together with a home study (prepared in accordance with 8 CFR 204.311 by someone authorized under 22 CFR Part 96 and 8 CFR 204.301 to complete home studies for Convention cases), and other evidence as described in new 8 CFR 204.310.

If USCIS approves the Form I–800A, the prospective adoptive parent(s) may arrange for the submission of the approval notice, the home study and other supporting evidence to the Central Authority of the Convention Country in which they hope to adopt a child. 8 CFR 204.312(d)(2). The Central Authority must receive the same home study as was submitted to USCIS.

Once the prospective adoptive parent(s) have received a report and any other information on a child from the relevant Central Authority and have decided to accept the referral, they would file Form I–800, with the report and other evidence specified in new 8 CFR 204.313, with the USCIS office or visa-issuing post specified in the Form I–800 instructions. This step must occur before the prospective adoptive parent(s) have adopted or obtained legal custody of the child.

At this point, a USCIS officer or, if the Form I–800 is properly filed with a visa-issuing post, a consular officer will provisionally adjudicate the Form I–800. (If the prospective adoptive parent(s) filed an application for waiver of any known or suspected ground of inadmissibility at the same time they filed the Form I–800 at a consular office, the consular officer will forward both the Form I–800 and the waiver application to the appropriate USCIS office for decision as to approval of the waiver and provisional approval of the Form I–800.)

If provisional approval of the I–800 petition is granted, the prospective adoptive parent(s) may then file a visa application for the child with the visa issuing post with jurisdiction over the child's country of residence. Section 42.24(g) sets forth the documentary requirements for the visa application, and states which requirements may be satisfied to the extent practicable. This may vary from case to case. In requiring some evidence only to the extent practicable, the rule recognizes that some evidence may not be obtainable at this early stage. However, in order to obtain as accurate an assessment of the case as possible at the initial review stage, it is important that supporting documents not be omitted unless obtaining them is truly not practicable under the circumstances of the particular case.

If, after reviewing the information provided, it appears to the consular officer that the child would not be ineligible, based on the information provided, to receive an immigrant visa, the officer will annotate the visa application to reflect this conclusion. See section 42.24(h).

If a USCIS officer or a consular officer has provisionally approved the I–800 petition and a consular officer has annotated the visa application, the consular officer is to notify the relevant Central Authority that the steps required by Article 5 of the Convention have been taken. (Article 5 of the Convention requires the receiving country to have: (a) Determined that the prospective adoptive parent(s) are eligible and suited to adopt; (b) ensured that the prospective adoptive parent(s) have been counseled as may be necessary; and (c) determined that the child is or will be authorized to enter and reside permanently in the receiving country.) The prospective adoptive parent(s) may then either complete the adoption in the Convention country or else obtain legal custody for the purpose of adoption.

After receiving appropriate notification from the Convention country that the adoption has occurred or, in custody for purpose of adoption cases, that legal custody has been granted, including a copy of the adoption or custody order, the consular officer will verify Convention and IAA compliance before affixing a certification to that effect to the adoption order. In verifying compliance, the consular officer must consider U.S. prior notification under Article 5 plus appropriate notification from the country of origin as prima facie evidence of compliance with the Convention and the IAA. In other words, the prior determination plus appropriate notification of the adoption or grant of legal custody is sufficient to establish compliance, so long as the consular officer does not have a well-founded and substantive reason to believe that the adoption or the grant of legal custody was non-compliant with the Convention or the IAA. At that point, the consular officer will finally adjudicate the Form I–800 and the visa application. If, however, the consular officer determines that the Form I–800 is not approvable, the consular officer will refer the case to USCIS for review and decision. The Department does not anticipate that this situation will arise often, if at all, because of the procedural safeguards inherent in the Convention adoption process.

3. *Comment:* One commenter asked what ''appeal process'' would be provided for prospective adoptive parents if, pursuant to section 42.24(h), they were informed of an ineligibility.

Response: Under the DHS Rule, prospective adoptive parents may file a waiver application for any inadmissibilities when the I–800 petition is filed. See 8 CFR 204.313(d)(5). After provisional approval of the petition, if an ineligibility is found that has not been overcome by a waiver submitted at the provisional approval stage, the visa application will be denied and prospective adoptive parents will be advised whether a waiver is available

and, if so, how to apply for it. As in any other immigrant visa case, an applicant will have an opportunity to present any additional evidence that may overcome the grounds of ineligibility, and to submit an application for a waiver if the visa is refused because of an ineligibility for which a waiver is available. See 22 CFR 42.81 and 8 CFR 212.7.

If USCIS denies a Form I–800A or a Form I–800, the prospective adoptive parents may appeal the denial, as specified in 8 CFR 204.314. The traditional legal doctrine of non-reviewability of a decision to deny a visa application, however, applies to Convention adoption cases to the same extent as any other visa application case.

4. *Comment:* One commenter asked whether there would be a time frame for provisional review.

Response: The DHS rule, which governs the provisional approval process, does not include a time frame for provisional review. This rule also does not include a time frame for the initial review of the visa application.

5. *Comment:* One commenter asked whether an agency could petition for provisional approval on a child's behalf before a prospective adoptive parent is identified.

Response: No. The Form I–800A for prospective adoptive parent(s) must be approved before a Form I–800 petition can be submitted on behalf of a particular child. However, an adoption service provider could gather the relevant documents in advance so as to expedite the submission of the I–800 petition once prospective adoptive parent(s) are identified.

6. *Comment:* One commenter asked whether the provisional approval of the I–800 petition had to take place in the country of origin or whether, in some cases, it could take place at the local USCIS office.

Response: The office with which the prospective adoptive parent(s) file the Form I–800 petition will vary. See DHS Rule, 8 CFR 204.308. If the Form I–800 is properly filed with a Stateside USCIS office, that office will make the decision regarding provisional approval. If the Form I–800 is properly filed abroad, the USCIS office or visa-issuing post abroad will make this decision.

7. *Comment:* One commenter suggested that the sixth word from the end of 42.24(f) be changed from ''return'' to ''forward,'' since in some cases DHS may not have seen the petition previously.

Response: We have made the suggested change, and have also replaced the reference to 22 CFR 42.43 with a reference to 8 CFR 204.313(i)(3), which requires consular officers to forward any Form I–800 petition that is not clearly approvable, along with accompanying evidence, to USCIS.

8. *Comment:* One commenter asked about how information about the specific documents required from each country of origin would be shared with prospective adoptive parents and adoption service providers.

Response: As currently, the information required from the country of origin will be available in the country-specific adoption flyer which is available both on *www.travel.state.gov* and from the relevant United States Consulate.

9. *Comment:* One commenter expressed concerns about the language in the explanatory section of the proposed rule, noting that generally the adoption service provider would be delivering the United States Government's Article 5 notification. The commenter expressed a preference that the consular officer directly notify the foreign Central Authority. The commenter also requested details about the acceptable methods of transmission.

Response: How the notification is transmitted to the country of origin will vary depending on the practices and procedures set up by the relevant consular post. This language was included to make clear that, although the notification would be originated by the consular officer, it could be delivered by adoption service providers. The United States approach to implementation of the Convention, as set forth in the IAA, has been to use certain adoption service providers to perform some Central Authority functions, in accordance with 22 U.S.C. part 96. (Convention Article 22 permits a Convention country to use accredited bodies and approved persons to perform certain tasks in the adoption process). Such providers are capable of transmitting this notification securely and expeditiously, in a method that will depend on the circumstances of the particular country.

10. *Comment:* One commenter asked for clarification of 42.24 (j), specifically what type of notification was anticipated, and suggested changing the term ''notification'' to ''documentation.''

Response: The type of notification that will satisfy section 42.24(j) may vary depending on the Central Authority of the relevant country of origin. The United States expects to work diplomatically with these Central Authorities to ensure that the necessary notification is obtained. ''Notification'' is the term used here because this language is drawn from the IAA, which refers to ''appropriate notification'' from the foreign Central Authority as a prerequisite to certificate issuance.

11. *Comment:* One commenter asked how the rule would affect the length and the number of any visits the prospective adoptive parents take to the country of origin.

Response: Because both the I–800A and the I–800 may be filed domestically, and the visa application may be filed without the physical presence of the applicant if not practicable, the rule will not necessarily impact the length or number of visits to the country of origin.

12. *Comment:* One commenter asked how provisional approval would affect the timing of the Interstate Compact (ICPC) approval.

Response: The DHS rule determines at what point in the process the petitioner for the child must comply with any U.S. State's pre-adoption requirements, including any State requirement to comply with ICPC. See, e.g., 8 CFR 204.305 (State preadoption requirements); 8 CFR 204.310 (filing requirements for Form I–800A); 8 CFR 204.311 (Convention adoption home study requirements); 8 CFR 204.313 (filing and adjudication of a Form I–800).

Summary of the Final Regulation

This final rule establishes new procedures that consular officers will follow in adjudicating cases of children whose cases are covered by the Convention. When children habitually resident abroad in a Convention country have been, are being, or will be moved in connection with adoption by parents habitually resident in the United States, the Convention applies. Although much of the petition and visa processes will be similar to the current orphan case procedures, there are important changes. Perhaps most significantly, United States authorities will perform the bulk of petition and visa adjudication work much earlier than under current practice. This early review will enable United States authorities to make the determination required by Article 5 of the Convention that the child will be eligible to enter and reside permanently in the receiving state prior to the adoption or grant of legal custody. The regulation also provides that, once the country of origin has provided appropriate notification that the adoption or grant of legal custody has occurred, including a copy of the adoption or custody order, the consular officer will issue a certificate to the United States adoptive or prospective adoptive parent(s) if the officer is satisfied that the requirements of the Convention and IAA have been met, and only if so will the consular

officer approve the immigration petition and complete visa processing. To streamline the process, the regulation departs from current practice by allowing consular officers to approve petitions for children whose cases are covered by the Convention regardless of whether the petition was originally filed with the Department or DHS.

The Department is issuing the rule as final with minor changes, taking into account the comments received and the DHS Rule. In particular, sections 42.24(f), (h) and (m) were slightly edited to reflect the fact that a petition filed originally with a consular officer would be ''forwarded,'' not ''returned,'' to DHS if the consular officer concluded that it was not clearly approvable, and to reflect the correct regulations. Section 42.24(d) was modified by the deletion of a requirement that a consular officer approve the petition, which would not have allowed for visa issuance in a case in which DHS approved a provisionally-approved petition after the consular officer had returned it as not clearly approvable. In addition, section 42.24(b) was changed to correspond more closely to the DHS rule with respect to the scope of application of the Convention and the handling of transition cases and cases involving a Convention adoptee who seeks to travel to the United States as a nonimmigrant for purposes of naturalization under INA section 322, as specified in 8 CFR 204.313(b)(2). Sections 42.24(e) and (h) were amended to clarify the operations of waivers of ineligibility. Also, a cross-reference making the definitions in 22 CFR 96.2 apply to 22 CFR 42.24 was added for consistency with all other relevant rules. (The DHS Rule and the Department of State rules for 22 CFR 96, 97, 98, 99 and now 22 CFR 42.24 use the same definitions for the same terms when those terms are defined in 22 CFR 96.2.) Consequently, the defined terms ''Convention country'' and ''legal custody'' were used in sections 42.24(b), (f), and (j). In addition, section 42.24(j) was amended to clarify that the country of origin's provision of appropriate notification, in addition to the consular officer's notification pursuant to Article 5, is required to establish prima facie evidence of compliance with the Convention and the IAA. Finally, the Department further modified section 42.24(h) to reflect the possibility that a visa ineligibility identified by a consular officer during the initial review could be either overcome or, after forwarding to DHS, waived.

Regulatory Findings

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. 552), the Department published a proposed rule and invited public comment.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth at sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule regulates individual aliens who seek immigrant visas and does not affect any small entities, as defined in 5 U.S.C. 601(6).

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. This rule would not result in any such expenditure, nor would it significantly or uniquely affect small governments.

The 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, Public Law 104–121. This 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, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' within the scope of section 3(f)(1) of Executive Order 12866. Nonetheless, the Department has reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders No. 12372 and No. 13132.

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.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35. The Department plans for applicants for visas for children adopted under the Hague Convention to use visa application forms that have already been approved by OMB. The forms related to the petition process, such as the I–800 and I–800A, are DHS forms, and DHS would be responsible for compliance with the PRA, where it applies, with respect to those forms. We currently anticipate that the certificates to be issued by consular officers will not involve the collection of additional information not already collected. Moreover, section 503(c) of the IAA exempts from the PRA any information collection ''for use as a Convention record as defined'' in the IAA. Information collected on Convention adoptions in connection with the visa, petition, and certificate processes would relate directly to specific Convention adoptions (whether final or not), and therefore would fall within this exemption. Accordingly, the Department has concluded that this regulation will not involve an ''information collection'' under the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 42

Immigration, Passports, Visas, Intercountry adoption, Convention certificates.

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended

■ In view of the foregoing, 22 CFR part 42 is amended as follows:

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for part 42 is revised to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105–277; Pub. L. 108–449; 112 Stat. 2681–795 through 2681–801; 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, Pub. L. 106–279.

■ 2. Add § 42.24 to Subpart C to read as follows:

§ 42.24 Adoption under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000.

(a) For purposes of this section, the definitions in 22 CFR 96.2 apply.

(b) On or after the Convention effective date, as defined in 22 CFR 96.17, a child habitually resident in a Convention country who is adopted by a United States citizen deemed to be habitually resident in the United States in accordance with applicable DHS regulations must qualify for visa status under the provisions of INA section 101(b)(1)(G) as provided in this section. Such a child shall not be accorded status under INA section 101(b)(1)(F), *provided that* a child may be accorded status under INA section 101(b)(1)(F) if Form I–600A or I–600 was filed before the Convention effective date. Although this part 42 generally applies to the issuance of immigrant visas, this section 42.24 may also provide the basis for issuance of a nonimmigrant visa to permit a Convention adoptee to travel to the United States for purposes of naturalization under INA section 322.

(c) The provisions of this section govern the operations of consular officers in processing cases involving children for whom classification is sought under INA section 101(b)(1)(G), unless the Secretary of State has personally waived any requirement of the IAA or these regulations in a particular case in the interests of justice or to prevent grave physical harm to the child, to the extent consistent with the Convention.

(d) An alien child shall be classifiable under INA section 101(b)(1)(G) only if, before the child is adopted or legal custody for the purpose of adoption is granted, a petition for the child has been received and provisionally approved by a DHS officer or, where authorized by DHS, by a consular officer, and a visa application for the child has been received and annotated in accordance with paragraph (h) of this section by a consular officer. No alien child shall be issued a visa pursuant to INA section 101(b)(1)(G) unless the petition and visa application are finally approved.

(e) If a petition for a child under INA section 101(b)(1)(G) is properly filed with a consular officer, the consular officer will review the petition for the purpose of determining whether it can be provisionally approved in accordance with applicable DHS requirements. If a properly completed application for waiver of inadmissibility is received by a consular officer at the same time that a petition for a child under INA section 101(b)(1)(G) is received, provisional approval cannot take place unless the waiver is approved, and therefore the consular officer, pursuant to 8 CFR 204.313(i)(3) and 8 CFR 212.7, will forward the petition and the waiver application to DHS for decisions as to approval of the waiver and provisional approval of the petition. If a petition for a child under INA section 101(b)(1)(G) is received by a DHS officer, the consular officer will conduct any reviews, determinations or investigations requested by DHS with regard to the petition and classification determination in accordance with applicable DHS procedures.

(f) A petition shall be provisionally approved by the consular officer if, in accordance with applicable DHS requirements, it appears that the child will be classifiable under INA section 101(b)(1)(G) and that the proposed adoption or grant of legal custody will be in compliance with the Convention. If the consular officer knows or has reason to believe the petition is not provisionally approvable, the consular officer shall forward it to DHS pursuant to 8 CFR 204.313(i)(3).

(g) After a petition has been provisionally approved, a completed visa application form, any supporting documents required pursuant to § 42.63 and § 42.65, and any required fees must be submitted to the consular officer in accordance with § 42.61 for a provisional review of visa eligibility. The requirements in § 42.62, § 42.64, § 42.66 and § 42.67 shall also be satisfied to the extent practicable.

(h) A consular officer shall provisionally determine visa eligibility based on a review of the visa application, submitted supporting documents, and the provisionally approved petition. In so doing, the consular officer shall follow all procedures required to adjudicate the visa to the extent possible in light of the degree of compliance with §§ 42.62 through 42.67. If it appears, based on the available information, that the child would not be ineligible under INA section 212 or other applicable law to receive a visa, the consular officer shall so annotate the visa application. If evidence of an ineligibility is discovered during the review of the visa application, and the ineligibility was not waived in conjunction with provisional approval of the petition, the prospective adoptive parents shall be informed of the ineligibility and given an opportunity to establish that it will be overcome. If the visa application cannot be annotated as described above, the consular officer shall deny the visa in accordance with § 42.81, regardless of whether the application has yet been executed in accordance with § 42.67(a); provided however that, in cases in which a waiver may be available under the INA and the consular officer determines that the visa application appears otherwise approvable, the consular officer shall inform the prospective adoptive parents of the procedure for applying to DHS for a waiver. If in addition the consular officer comes to know or have reason to believe that the petition is not clearly approvable as provided in 8 CFR 204.313(i)(3), the consular officer shall forward the petition to DHS pursuant to that section.

(i) If the petition has been provisionally approved and the visa application has been annotated in accordance with subparagraph (h), the consular officer shall notify the country of origin that the steps required by Article 5 of the Convention have been taken.

(j) After the consular officer has received appropriate notification from the country of origin that the adoption or grant of legal custody has occurred and any remaining requirements established by DHS or §§ 42.61 through 42.67 have been fulfilled, the consular officer, if satisfied that the requirements of the IAA and the Convention have been met with respect to the adoption or grant of legal custody, shall affix to the adoption decree or grant of legal custody a certificate so indicating. This certificate shall constitute the certification required by IAA section 301(a) and INA section 204(d)(2). For purposes of determining whether to issue a certificate, the fact that a consular officer notified the country of origin pursuant to paragraph (i) of this

section that the steps required by Article 5 of the Convention had been taken and the fact that the country of origin has provided appropriate notification that the adoption or grant of legal custody has occurred shall together constitute prima facie evidence of compliance with the Convention and the IAA.

(k) If the consular officer is unable to issue the certificate described in paragraph (j) of this section, the consular officer shall notify the country of origin of the consular officer's decision.

(l) After the consular officer determines whether to issue the certificate described in paragraph (j) of this section, the consular officer shall finally adjudicate the petition and visa application in accordance with standard procedures.

(m) If the consular officer is unable to give final approval to the visa application or the petition, then the consular officer shall forward the petition to DHS, pursuant to § 42.43 or 8 CFR 204.313(i)(3), as applicable, for appropriate action in accordance with applicable DHS procedures, and/or refuse the visa application in accordance with § 42.81. The consular officer shall notify the country of origin that the visa has been refused.

Dated: October 22, 2007.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. E7–21340 Filed 10–29–07; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Part 300

RIN 1820–AB57

Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities; Corrections

AGENCY: Office of Special Education Programs, Department of Education.

ACTION: Correcting amendments.

SUMMARY: The Department of Education published final regulations in the **Federal Register** on August 14, 2006, to implement changes made to the Individuals with Disabilities Education Act by the Individuals with Disabilities Education Improvement Act of 2004. That document inadvertently included minor technical errors. This document corrects the final regulations.

DATES: Effective October 30, 2007.

FOR FURTHER INFORMATION CONTACT: Suzanne Sheridan, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6E229, Washington, DC 20202. Telephone: (202) 401–6025.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: This document corrects technical errors included in the final regulations which were published in the **Federal Register** on August 14, 2006 (71 FR 46540).

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(Catalog of Federal Domestic Assistance Numbers: Assistance to States for the Education of Children with Disabilities (84.027) and Preschool Grants for Children with Disabilities (84.173))

List of Subjects in 34 CFR Part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

■ Accordingly, 34 CFR part 300 is corrected by making the following correcting amendments:

PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1221e–3, 1406, 1411–1419, unless otherwise noted.

§ 300.8 [Corrected]

■ 2. In § 300.8(c)(3), add the punctuation ''.'' after the word, ''amplification''.

§ 300.9 [Corrected]

■ 3. In § 300.9 —

■ A. In paragraph (a), remove the word ''other'' and add, in its place, the words ''through another''; and

■ B. In paragraph (c)(1), remove the word ''anytime'' and add, in its place, the words ''any time''.

§ 300.18 [Corrected]

■ 4. In § 300.18 —

■ A. In the heading for paragraph (c), add the word ''academic'' before the word ''achievement'';

■ B. In the introductory text in paragraph (c), add the word ''academic'' before the word ''achievement'';

■ C. In paragraph (c)(2), add the words ''alternate academic achievement'' before the word ''standards''; and

■ D. In the introductory text of paragraph (e), remove the word ''meets'' and add, in its place, the word ''meet''.

§ 300.103 [Corrected]

■ 5. In § 300.103(a), add the word ''that'' after the word ''support''.

§ 300.118 [Corrected]

■ 6. In § 300.118, remove the word ''for'' that appears after the word ''supervision'' and add, in its place, the word ''of''.

§ 300.137 [Corrected]

■ 7. In § 300.137(b)(1), remove the citation ''§ 300.134(c)'' and add, in its place, the citation ''§ 300.134(d)''.

§ 300.162 [Corrected]

■ 8. In § 300.162(c)(1), remove the citation ''§ 300.202'' and add, in its place, the citation ''§ 300.203''.

§ 300.172 [Corrected]

■ 9. In the introductory text of § 300.172(c)(1), remove the word ''must'' that appears before the word ''enter''.

§ 300.181 [Corrected]

■ 10. In § 300.181(c)(5), remove the citation ''(b)(4)'' and add, in its place, the citation ''(c)(4)''.