

*Regulatory Flexibility Act*

The Chief Counsel for Regulation at the Department certified to the Chief Counsel for Advocacy, Small Business Administration that this rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

The Department proposes to establish procedures for importation of supplies free of antidumping or countervailing duties if those supplies are to be used in emergency relief work, as authorized under section 318(a) of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1318(a)). Section 318(a) of the Act gives the Secretary of the Treasury authority, on a temporary basis, to respond immediately where the President declares the existence of an emergency. Specifically, the Secretary may "permit \* \* \* the importation free of duty of \* \* \* supplies for use in emergency relief work." This authority, insofar as it encompasses antidumping and countervailing duties, was delegated to the Secretary of Commerce in 1979. Section 318(a) of the Act authorizes the Secretary to take action "under such regulations as the Secretary may prescribe." This proposed action prescribes such regulations. This proposed action only addresses the procedures for importation of supplies for emergency relief work free of antidumping and countervailing duties.

The Department is unable to estimate the number of small entities that will be affected by this rule as the Department does not collect this information; nor is the Department able to predict the types of entities that would apply for importation of supplies for use in emergency relief work free of antidumping or countervailing duties. However, there is the possibility that this rule would impact some number of small entities. Although the number of small entities that may be impacted is unknown, this rule would not impose a significant economic impact. This rule merely sets up the process persons would use to request importation of supplies for use in emergency relief work free of antidumping or countervailing duties. The exemption of certain goods from liability for antidumping or countervailing duties will not result in a significant economic impact because the exempted goods would be gifts contributed to, or goods sold for, the specific purpose of providing emergency relief. Because the purpose of these provisions is targeted specifically for emergency relief and not for mass consumption, this rule would not have a significant economic impact

on a substantial number of small entities.

**List of Subjects in 19 CFR Part 358**

Administrative practice and procedure, Antidumping duties, Business and industry, Countervailing duties, Emergency powers, Reporting and recordkeeping requirements.

Dated: June 16, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

For the reasons stated, 19 CFR part 358 is proposed to be added to read as follows:

**PART 358—SUPPLIES FOR USE IN EMERGENCY RELIEF WORK**

Sec.

358.101 Scope.

358.102 Definitions.

358.103 Importation of supplies.

**Authority:** 19 U.S.C. 1318(a).

**§ 358.101 Scope.**

This part sets forth the procedures for importation of supplies for use in emergency relief work free of antidumping or countervailing duties, as authorized under section 318(a) of the Act.

**§ 358.102 Definitions.**

For purposes of this part:

*Act* means the Tariff Act of 1930, as amended.

*Customs* means the Bureau of Customs and Border Protection of the United States Department of Homeland Security.

*Department* means the United States Department of Commerce.

*Order* means an order issued by the Secretary under section 303, section 706, or section 736 of the Act.

*Secretary* means the Secretary of Commerce or a designee.

*Supplies for use in emergency relief work* means supplies for use in emergency relief work related to the emergency declared by the President.

**§ 358.103 Importation of supplies.**

(a) Where the President, acting under section 318 of the Act, authorizes the Secretary to permit the importation of supplies for use in emergency relief work free of antidumping and countervailing duties, the Secretary shall consider requests for such importation under the following conditions:

(1) Before importation, a written request shall be submitted to the Secretary by the person in charge of sending the subject merchandise from the foreign country, or by the person for

whose account it will be brought into the United States. Three copies of the request should be submitted to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

(2) The request shall state the Department antidumping or countervailing duty order case number, the producer of the merchandise, a detailed description of the merchandise, current HTS number, price in the United States, quantity, proposed date of entry, proposed port of entry, mode of transport, destination, use to be made of the merchandise, and any other information the person would like the Secretary to consider.

(b) If the Secretary determines to permit importation of particular merchandise for use in emergency relief work, the Secretary will notify the person who submitted the request and instruct Customs to allow entry of the merchandise without regard to antidumping or countervailing duties.

(c) Any subject merchandise entered under paragraph (b) of this section which is used in the United States other than for a purpose contemplated for it by section 318(a) of the Act may be subject to seizure or other penalty, including under section 592 of the Act.

(d) Any subject merchandise entered under paragraph (b) of this section is subject to the Department's reporting requirements in its conduct of an antidumping or countervailing duty administrative review, however, the Department will exclude such merchandise from the calculation of assessment and cash deposit rates.

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**DEPARTMENT OF STATE****22 CFR Part 42**

[Public Notice 5445]

RIN 1400-AC17

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

**AGENCY:** State Department.

**ACTION:** Proposed Rule with request for comments.

**SUMMARY:** This proposed rule amends U.S. 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 (hereinafter the "Convention") and the Intercountry Adoption Act of 2000 (hereinafter the "IAA") This proposed 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 subject to the Convention.

**DATES:** Written comments must be submitted on or before July 24, 2006.

**ADDRESSES:** You may submit comments, identified by any of the following methods:

- E-mail: [visaregs@state.gov](mailto:visaregs@state.gov). You must include the RIN number in the subject line of your message.
- Mail: Chief, Legislation and Regulations Division, Visa Office, U.S. Department of State, 2401 E Street, NW., Washington DC 20520-0106.
- Fax: 202-663-3898. You must include the RIN number in the subject line of your message.

Persons with access to the Internet may also view this document and provide comments by going to the regulations.gov Web site at: <http://www.regulations.gov/index.cfm>.

**FOR FURTHER INFORMATION CONTACT:** Barbara J. Kennedy, Legislation and Regulations Division, Visa Services, U.S. Department of State, 2401 E Street, NW., Room L-603, Washington, DC 20520-0106; telephone 202-663-1206 or e-mail [KennedyBJ@state.gov](mailto: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 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, INA 101(b)(1)(G) ("Hague child"), that roughly parallels the current "orphan" definition, INA 101(b)(1)(F), but that applies only to children being adopted from Convention parties. (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 in accordance with the Convention and the IAA. Separately, the IAA requires domestic entities to recognize adoptions that have been so certified by the Department.

The Department of Homeland Security will be issuing separate but complementary regulations relating to the immigration process for Hague children. Additional regulations will implement other aspects of the Convention and the IAA, such as on the accreditation/approval of adoption service providers to perform adoption services in cases covered by the Convention (22 CFR Part 96), preservation of records (22 CFR Part 98), and certificate issuance with respect to U.S. court proceedings (22 CFR Part 97). Further background on the Convention and 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).

**The Proposed Regulation**

This proposed rule establishes new procedures that consular officers will follow in adjudicating Hague child cases. Although much of the petition and visa processes will be similar to the current orphan case procedures, there are important changes. Perhaps most significantly, U.S. authorities will perform the bulk of petition and visa adjudication work much earlier than under current practice. This early review will enable U.S. 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 custody. The regulation also provides that, once the country of origin has provided appropriate notification that the adoption or custody grant has occurred, the consular officer will issue a certificate to the U.S. adoptive or prospective adoptive parent 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 Hague child petitions regardless of

whether the petition was originally filed with the Department or DHS.

Paragraph (a) of the proposed § 42.24 sets forth short forms and abbreviations of terms used in this section that do not appear in the general definitions for 22 CFR Part 42.

Paragraph (b) clarifies that INA 101(b)(1)(G) is the only definition of child applicable to adoptions subject to the Convention. Children who are immigrating to the United States from a Convention country in connection with an adoption will not be classifiable under INA 101(b)(1)(F). The Convention obligates Contracting Parties to apply the Convention in all cases that fall within its scope. Continuing to allow children to qualify under INA 101(b)(1)(F), which provides for children to enter the United States as part of the intercountry adoption process, but which does not incorporate Hague procedures, would be inconsistent with this mandate. (Note, however, that it may still be possible for a child adopted in a Hague country to qualify for a visa pursuant to INA 101(b)(1)(E). INA 101(b)(1)(E) is designed to allow immigration of an adopted child who is an established part of an existing family. It generally requires that the child have been in the legal custody of, and have resided with, the adoptive parent(s) for at least two years. Unlike INA 101(b)(1)(F), INA 101(b)(1)(E) is not targeted at children habitually resident abroad being adopted by parents habitually resident in the United States, but rather at adoptive families formed while both parents and child were habitually resident abroad. A subsequent move to the United States would not trigger U.S. procedural obligations under the Convention.

Paragraph (c) provides that the provisions of § 42.24 will govern the operations of consular officers in processing Hague child cases. It also incorporates the Secretary's non-delegable authority to waive 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. This authority is granted in IAA section 502. The Department does not anticipate that the Secretary will exercise this authority, which would require her personal consideration of the matter, except in the most rare and unusual of circumstances.

Paragraph (d) states the general rules that will govern the adoption process in Hague child cases and the division of functions between DHS and the Department. To qualify as a Hague

child, a DHS or consular officer must review and provisionally approve an immigration petition for the child (I-600) and a consular officer must review and annotate the child's visa application prior to the foreign adoption or custody proceeding. A consular officer will give final approval to the petition and visa application only after the adoption or custody proceeding, and before a visa may be issued to the child.

This procedure reflects a significant shift in timing of consular processing of adoption cases that is effectively mandated by the Convention. Under current practices, the determination of whether the child will be permitted to enter the United States is generally made only after the adoption or custody proceeding has been completed. Article 5 of the Convention requires that the receiving country make such a determination much earlier in the process. Pursuant to this Article, the adoption may not take place until the competent authorities of the receiving State have (1) Determined that the prospective adoptive parents are eligible and suited to adopt; (2) ensured that the prospective adoptive parents have been counseled as may be necessary; and (3) determined that the child is or will be authorized to enter and reside permanently in that State. These requirements effectively mean that U.S. authorities must provisionally review the child's case before an adoption or custody proceeding under the Convention takes place abroad.

Paragraph (e) sets forth the procedures a consular officer will follow if a petition is filed abroad with a consular officer. Consular officers are instructed to follow DHS requirements in making a decision on provisional approval of the petition. Based on consultations with DHS, the Department anticipates that before providing provisional approval, a consular or DHS officer will need to establish that DHS has granted I-600A approval (concluding that prospective adoptive parents are eligible and suitable to adopt). In addition, a consular or DHS officer will need to determine whether, but for the absence of a final adoption or custody order, the proposed adoption or custody grant complies with all Convention requirements and whether the child falls within the Hague child definition. In some cases, as is current practice, DHS will carry out an initial review of classification but request that a consular officer do additional reviews, determinations or investigations. The regulation makes clear that the consular officer will provide this service to DHS so that it can decide whether to grant provisional approval of the petition.

Paragraph (f) instructs consular officers to approve a petition provisionally if, in accordance with applicable DHS requirements, it appears the child will be classifiable as a Hague child and that the proposed adoption or grant of custody will be in compliance with the Convention. If a consular officer knows or has reason to believe the petition is not provisionally approvable, the consular officer must return the petition to DHS for processing in accordance with existing procedures for consular officer suspension of action in petition cases, which are set forth in § 42.43.

Paragraph (g) requires an immigrant visa application for the child, together with supporting documentation identified in 42.63 (Application forms and other documentation) and 42.65 (Supporting documents) and any required fees, to be submitted to a U.S. consular officer located in the consular district in which the child's visa will be processed (as determined by § 42.61) for a provisional review of visa eligibility. Paragraph (g) also requires visa applicants to comply with the remainder of the requirements normally applicable to persons filing an immigrant visa petition to the extent practicable to do so: § 42.62 (personal appearance and interview of applicant), § 42.64 (passport requirements), § 42.66 (medical examination) and § 42.67 (execution of application, registration, and fingerprinting). Because conclusions drawn at this stage of processing will be critical to the determination of the child's eligibility to enter and reside permanently in the United States, it will be important for the consular officer to make as comprehensive a review of visa eligibility as possible. In some cases, however, it will not be practicable to satisfy all visa processing requirements prior to the adoption or custody grant, in particular with respect to requirements that require actions to be taken by the applicant child. For example, it may not be practicable for a child to travel a considerable distance to be examined by a panel physician or be interviewed by a consular officer until the adoption or custody proceeding has taken place. Thus the regulation does not require applicants to comply with § 42.62, § 42.64, § 42.66 or § 42.67 at the provisional review stage if it is not practicable to do so.

Paragraph (h) instructs the consular officer to determine visa eligibility provisionally based on the information provided. The consular officer must follow all procedures that would normally be required to adjudicate an immigrant visa, except to the extent the

consular officer cannot because the applicant has not provided the necessary input. For example, the consular officer does not need to examine a panel physician's report if the applicant has not undergone a panel physician exam. If there is other information in the record before the consular officer indicating that the child may have a disease that would result in a medical ineligibility, however, the consular officer will have to take this information into account as part of the provisional review process.

If it appears that the child will not be ineligible for a visa, the consular officer will so annotate the visa application. If it appears the child will be ineligible for a visa, the rule requires the consular officer to inform the prospective adoptive parents of the ineligibility and give them an opportunity to show that it will be overcome. If, after the prospective adoptive parents have had such an opportunity, the child continues to appear ineligible, the consular officer will be required to deny the visa in accordance with the normal procedures set forth in § 42.81. Although these procedures normally apply only to executed visa applications, this proposed rule will authorize consular officers to follow the procedures set forth in § 42.81 even if the application has not been executed. This adjustment to normal procedures is required because in at least some cases the applicant may not have complied with § 42.67 (execution of application, registration, and fingerprinting). If, in the course of reviewing the visa-related materials, the consular officer comes to know or have reason to believe that the petition is not approvable, the consular officer will be required to return the petition to DHS for processing in accordance with existing procedures for consular officer suspension of action in petition cases, set forth in § 42.43.

Paragraph (i) provides that, if both the petition and visa provisional reviews are concluded favorably, and the consular officer is aware of no grounds that would preclude the entry of the child into the United States, the consular officer will notify the country of origin that the steps required under Article 5 have been taken, so that the adoption or custody proceeding may proceed. The Department intends that, in general, the consular officer's notification will be transmitted to the country of origin through the relevant adoption service provider.

Paragraph (j) provides that, once the country of origin has notified the consular officer that the adoption or grant of custody has occurred and once any remaining petition or visa-related

requirements have been met, the consular officer will reexamine the case. (Thus, for example, if it was not practicable for the child to submit to a panel physician's exam at the provisional review stage, the exam must be done prior to this final stage of consular officer review.) If, upon review of additionally submitted information, the consular officer is satisfied that the Convention and IAA requirements have been met, the consular officer will affix a certificate so indicating to the adoption decree or grant of custody. This certificate will meet the requirements of INA section 204(d)(2), which mandates certification by the Department prior to petition approval, as well as the requirements of IAA section 301(a), which addresses certificate issuance by the Department to parents. Paragraph (j) also instructs consular officers that, for purposes of deciding whether to issue a certificate, the fact that a consular officer previously provided notification to the country of origin pursuant to paragraph (i) (*i.e.*, the Article 5 notification) with respect to the case is *prima facie* evidence of compliance with the Convention and IAA. The earlier provisional approval of the petition, and Article 5 notification, will have required a finding of Convention and IAA compliance on every matter except the existence of a final adoption or custody decree. Thus, following appropriate notification from the country of origin regarding completion of the adoption or custody proceedings, and compliance with all remaining visa and petition requirements, the prior determinations should be considered a sufficient basis on which to issue a certificate except in very unusual cases in which a consular officer becomes aware of information calling into question Convention and IAA compliance.

Paragraph (k) instructs consular officers to notify the country of origin in those rare cases for which they are unable to certify Convention and IAA compliance as provided in paragraph (j). For example, new information may be discovered that reveals that birthparent consent was fraudulently obtained. Article 24 of the Convention provides that recognition of an adoption may be refused by a Contracting State if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child. The country of origin is notified so that it can be involved in determining appropriate next steps in the case.

Following the determination of whether to issue the certificate described in paragraph (j), paragraph (l) instructs the consular officer to perform

a final adjudication of the petition and visa application in accordance with standard procedures.

There may also be circumstances in which, although the adoption is certified as being in compliance with the Convention and the IAA, a visa cannot be issued to the child, at least in the immediate term. For example, if the panel physician medical exam is not performed prior to Article 5 notification, completion of that exam may reveal that the child has a medical ineligibility. Such cases will usually be resolved through treatment of an illness or through the use of Department and DHS waiver authorities in appropriate cases.

Paragraph (m) instructs consular officers unable to give final approval to the petition at this stage to follow standard procedures in handling such cases, which include returning the petition to DHS for possible revocation, pursuant to § 42.43, and denial of the visa pursuant to § 42.81. If the petition is approvable but the visa application is not, the visa must be refused in accordance with § 42.81.

#### **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 is publishing this proposed rule and inviting public comment.

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

The Department of State, in accordance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612) and Executive Order 13272, section 3(b), has evaluated the effects of this action of 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.

##### *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 I600 and I600A, are DHS forms, and DHS would be responsible for compliance with the PRA, where it applies, with respect to any changes in 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.

In view of the foregoing, 22 CFR part 42 would be 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. 107–56, sec 421; The Convention on Protection of Children and Cooperation 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 a new § 42.24 to subpart C to read as follows:

#### **§ 42.24 Adoption under the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and the Intercountry Adoption Act of 2000.**

(a) For purpose of this section, the following definitions apply:

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

*DHS* means the Department of Homeland Security and encompasses the former Immigration and Naturalization Service (INS) or any successor entity designated by the Secretary of Homeland Security to assume the functions vested in the Attorney General by the IAA relating to the INS's responsibilities.

*IAA* means the Intercountry Adoption Act of 2000, Public Law 106–279 (2000) (42 U.S.C. 14901–14954), as amended from time to time.

(b) A child habitually resident in a country with which the Convention is

in force with the United States who is traveling to the United States in connection with an adoption 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).

(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 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 only be classifiable under INA section 101(b)(1)(G) if, before the child is adopted or legal custody for the purpose of adoption is granted, (1) 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 (2) 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 by a consular officer.

(e) If a petition for a child under INA section 101(b)(1)(G) is received by a consular officer, the consular officer will review the petition for the purpose of determining whether the petition can be provisionally approved in accordance with applicable DHS requirements. 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 101(b)(1)(G) and that the proposed adoption or grant of 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 return it to DHS pursuant to § 42.43.

(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 §§ 42.62–42.67. 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, 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, 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). If in addition the consular officer comes to know or have reason to believe that the petition is not approvable as provided in § 42.43, the consular officer shall return the petition to DHS pursuant to that section.

(i) If the petition has been provisionally approved, the visa application has been annotated in accordance with subparagraph (h), and the consular officer is aware of no grounds that would preclude the entry of the child into the United States following the adoption or grant of custody, 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 custody has occurred and any remaining requirements established by DHS or §§ 42.61–42.67 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 custody, shall affix to the adoption decree or grant of 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) that the steps required by Article 5 of the Convention had been taken shall 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, as appropriate, return the petition to DHS for appropriate action in accordance with applicable DHS procedures and/or refuse the visa application in accordance with § 42.43 or § 42.81. The consular officer shall notify the country of origin that the visa has been refused.

Dated: June 9, 2006.

**Maura Harty,**

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

[FR Doc. E6-9596 Filed 6-21-06; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD07-06-019]

RIN 1625-AA09

#### **Drawbridge Operation Regulations; New River and New River South Fork Bridges, Ft. Lauderdale, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulations governing the operation of the S.E. Third Avenue, S. Andrews Avenue and Marshal (Seventh Avenue) Bridges across the New River at miles 1.4, 2.3, and 2.7 respectively, and the regulation governing the operation of the Davie Boulevard (S.W. Twelfth Street) Bridge across the New River, South Fork, mile 0.9, Fort Lauderdale, Broward County, Florida.

**DATES:** Comments and related material must reach the Coast Guard on or before August 21, 2006.

**ADDRESSES:** You may mail comments and related material to Commander (dpb), Seventh Coast Guard District, 909 S.E. 1st Ave, Suite 432, Miami, FL 33131-3050. Commander (dpb) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Branch, Seventh Coast Guard District, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Lieberum, Project Manager, Seventh Coast Guard District, Bridge Branch, 305-415-6744.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07-06-019], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### **Public Meeting**

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to the Bridge Branch, Seventh Coast Guard District, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### **Background and Purpose**

The City of Fort Lauderdale has requested that the Coast Guard change the current operating regulations of four bridges on the New River and New River South Fork by adding an additional half-hour to the morning and afternoon no-draw hours to the S.E. Third Avenue Bridge, the Davie Boulevard (S.W. Twelfth Street) Bridge, and the operating regulations of the S. Andrews Avenue and Marshal (Seventh Avenue) Bridges to include these same non-draw periods. Currently, the S.E.

Third Avenue Bridge and the Davie Boulevard Bridge open on signal, except that from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, the draws need not be opened for the passage of vessels; and the Andrews Avenue and Marshal Bridges open on signal, however the Andrews Avenue draw need not be opened for upbound vessels when the draw of the Florida East Coast Railroad Bridge is in the closed position.

The proposed regulations for these bridges, which state that the draws need not be opened for the passage of vessels from 7:30 a.m. through 9 a.m. and from 4:30 p.m. through 6 p.m., Monday through Friday, except Federal holidays, will help alleviate the existing vehicle traffic delays.

##### **Discussion of Proposed Rule**

The Coast Guard proposes to change the operating regulations of the S.E. Third Avenue Bridge, mile 1.4, the S. Andrews Avenue Bridge, mile 2.3, the Marshal (Seventh Avenue) Bridge, mile 2.7, and the Davie Boulevard (S.W. Twelfth Street) Bridge, mile 0.9, across the New River and South Fork of the New River. The draw shall open on signal, except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, the draw need not be opened for the passage of vessels. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed as necessary.

The proposed rule change would impact automobile traffic crossing the New River and New River, South Fork Bridges, as well as boat operators traversing the New River and New River, South Fork. Broward County commuters would gain one additional half hour each morning and evening during rush-hour in which to cross the Bridges without interruption due to vessel traffic. Vessel operators on the river would only have an additional half-hour each morning and evening in which they would have to wait for the draw to open.

##### **Regulatory Evaluation**

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).