

S. Treaty Doc. 105–51 (1998); 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)), 32 I.L.M. 1134 (1993); Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954.

II. Introduction

Regulations to implement the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the recently enacted Intercountry Adoption Act of 2000 (the IAA), Public Law 106–279, 42 U.S.C. 14901–14954 (herein referred to as the IAA or Public Law 106–279), are being proposed for the first time. These regulations will be added as part 96 of title 22 of the Code of Federal Regulations (CFR). The purpose of these regulations is to enable the United States to become a party to the Convention. The Convention governs intercountry adoptions between countries that are parties to the Convention (“Convention adoptions”). The IAA is the U.S. implementing legislation for the Convention. Once the Convention enters into force for the United States, all Convention adoptions must comply with the Convention, the IAA, and these regulations.

These regulations address the accreditation of agencies (non-profit adoption service providers) and the approval of persons (for-profit and individual adoption service providers) to provide adoption services in Convention cases. The regulations also set forth the process for designating one or more accrediting entities to perform the accreditation and approval functions, the procedures for conferring and renewing accreditation and approval, the procedures for monitoring compliance with accreditation or approval standards, the rules for taking adverse action against accredited agencies and approved persons, and the standards for accreditation and approval. The regulations also address which agencies and persons are required to adhere to these standards, and what adoption-related activities are exempted from the accreditation and approval requirements. Finally, the regulations set forth the procedures and requirements for temporary accreditation under section 203(c) of the IAA. (Pub. L. 106–279, section 203(c)).

These regulations do not address how the Department and the Department of Homeland Security (herein referred to as DHS until the Department of Homeland Security identifies which DHS bureau will assume the functions delegated to the Immigration and Naturalization Service (INS) under the IAA will implement the provisions of the Convention and the IAA that govern

procedures for completing and recognizing Convention adoptions. The regulations on intercountry adoption procedures for Convention adoptions will become part 97 of title 22 of the CFR and will be published at a later date. Also published in today’s **Federal Register** is the proposed rule for part 98 of title 22 of the CFR. Part 97 is reserved, and part 98 provides the proposed rule on the Department and DHS’s retention of Convention records.

The IAA designates the U.S. Department of State as the Central Authority for the United States. The Secretary of State is designated as the head of the Central Authority. For purposes of this Preamble, the shorthand term “the Department” is generally used rather than the Secretary of State or the Department of State. Certain Central Authority functions are delegable outside of the Department and the Federal government and will effectively be delegated either to the accrediting entities or to the accredited agencies, temporarily accredited agencies, or approved persons, as appropriate, pursuant to these regulations. The IAA specifically provides that the Department may “authorize public or private entities to perform appropriate central authority functions for which the [Department] is responsible, pursuant to regulations or under agreements published in the **Federal Register**.” (Pub. L. 106–279, section 102(f)(1)).

As Central Authority, the Department will be responsible for: Acting as liaison with other Central Authorities; assisting U.S. citizens seeking to adopt children from abroad and to residents of other Convention countries seeking to adopt children from the United States; exchanging information; overseeing the accreditation and approval of adoption service providers; monitoring and facilitating individual cases involving U.S. citizens; and, jointly with the Attorney General (presumably now the Secretary of Homeland Security), establishing a Case Registry with information on intercountry adoptions with Convention and non-Convention countries.

This Preamble is intended to facilitate understanding of the background and purpose underlying the regulations. The Preamble should not be considered a substitute for the text of the regulations themselves. The Preamble is designed to provide an overview of the proposed regulations; however, it will not become part of the final regulations when they are published in the CFR. Accrediting entities, as well as accredited agencies and approved persons, and those working under the supervision and

responsibility of accredited agencies and approved persons, will be held responsible for compliance with the regulations that apply to them.

III. The 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption

A. Development of the Hague Convention on Intercountry Adoption

A copy of the Convention is available on the Hague Conference Web site at <http://www.hcch.net>. The Convention is a multilateral treaty developed under the auspices of the intergovernmental organization known as the Hague Conference on Private International Law (Hague Conference). The Convention provides a framework of safeguards for protecting children and families involved in intercountry adoption, while still being acceptable to, and capable of being implemented by, diverse sending and receiving countries. This Convention is one of the most widely embraced and broadly accepted conventions developed by the Hague Conference.

The Convention is the first international instrument to recognize that intercountry adoption could “offer the advantage of a permanent home to a child for whom a suitable family cannot be found in his or her state of origin.” (S. Treaty Doc. 105–51, at 1). Some countries involved in the multilateral negotiations on the Convention sought to prohibit intercountry adoptions even for those children eligible for adoption for whom a permanent family placement in the child’s country of origin could not be arranged. On the other hand, proponents of intercountry adoption at the Hague Conference believed that the best interests of a child would not be served by arbitrarily prohibiting a child in need of a permanent family placement from being matched with an adoptive family simply because the family resided in another country. The Convention reflects a consensus that an intercountry adoption may well be in an individual child’s best interests.

If a country becomes a party to the Convention, intercountry adoptions—incoming and outgoing—with other party countries must comply with the requirements of the Convention. The objectives of the Convention are: First, to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for the child’s fundamental rights as recognized in international law; second, to establish a system of cooperation among contracting states to ensure that those safeguards are