



**4710-13**

**DEPARTMENT OF STATE**

**22 CFR Parts 50 and 51**

**[Public Notice 9804]**

**RIN 1400-AD54**

**Passports**

**AGENCY:** Department of State.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule provides various changes and updates to the Department of State passport rules. The proposed rule incorporates statutory passport denial and revocation requirements for certain convicted sex offenders. It notes that, notwithstanding the legal bases for denial or revocation of a passport, the Department may issue a passport for direct return to the United States. It sets out the Department's procedures for denying and cancelling Consular Reports of Birth Abroad. Finally, the proposed rule provides additional information relating to the conduct of review hearings.

DATES: The Department will accept comments on the proposed regulation up to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit comments by any of the following methods:

- Internet: At [www.regulations.gov](http://www.regulations.gov), search for this notice by searching for Docket No. DOS-2016-0080 or RIN 1400-AD54.
- By mail: Director, Office of Legal Affairs and Law Enforcement Liaison, Passport Services, U.S. Department of State, 44132 Mercure Circle, P.O. Box 1227, Sterling, VA 20166-1227
- By e-mail: Submit comments to: [PassportRules@state.gov](mailto:PassportRules@state.gov).

**FOR FURTHER INFORMATION CONTACT:** Anita Mody, Office of Legal Affairs, Passport Services, (202) 485-6500. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** The Department is proposing to amend various sections of Subparts A, E, and F within Part 51 and Subpart A within Part 50 of Title 22 of the CFR.

Consistent with 22 U.S.C. 211a, the proposed rule in § 51.4(g)(1) revises the previous rule to now state that a passport is invalid when the passport revocation

notification is approved. This revision leaves unchanged the Department's obligation, set forth at § 51.65(a), to send notification of the revocation, and the reasons therefor, in writing.

The proposed new provision in § 51.4(g)(8) provides that a passport is invalid when a Certificate of Loss of Nationality is approved. This provision, consistent with 8 U.S.C. 1481(a), specifies that a passport is not valid once the Department approves the bearer's formal renunciation of nationality.

The proposed rule incorporates statutory passport denial and revocation requirements for certain convicted sex offenders as codified at 22 U.S.C. 212a.

Proposed § 51.60(h) requires denial of a passport to an individual convicted under 18 U.S.C. 2423 and who used a passport or otherwise crossed an international border in committing the underlying offense. In accordance with 22 U.S.C. 212a, upon timely notification by the Attorney General, such an individual's passport application will be denied during the period covering the date of conviction and ending on the later of (1) the date on which the individual is released from a sentence of imprisonment relating to the offense; or (2) the end of a period of parole or other supervised release of the covered individual relating to the offense. However the Department may issue a passport in emergency circumstances or for humanitarian reasons, or may issue a limited passport valid only for direct return to the United States.

Proposed § 51.60(i) notes the Department's authority, consistent with 22 U.S.C. 217a, to, as appropriate, issue limited validity passports good only for direct return to the United States, notwithstanding any prior revocation or denial.

Proposed § 51.62(d) requires revocation of a passport previously issued to an individual convicted under 18 U.S.C. 2423 and who used a passport or otherwise crossed an international border in committing the underlying offense. In accordance with 22 U.S.C. 212a, upon timely notification by the Attorney General, such an individual's passport will be revoked once convicted and until the later of (1) the date on which the individual is released from a sentence of imprisonment relating to the offense; or (2) the end of a period of parole or other supervised release of the covered individual relating to the offense.

Proposed § 51.62(c), deriving from the Department's existing statutory authority including under 8 U.S.C. 1504, sets out that the Department may cancel Consular Reports of Birth Abroad that were obtained illegally, fraudulently or erroneously; were created through illegality or fraud; have been fraudulently altered or misused; or where the bearer of the document is not a U.S. national. Specific reference to cancellation of Consular Reports of Birth Abroad has been added to the provisions on revocation or limitation of passports at § 51.62, notification of such action at § 51.65, the surrendering of passports at § 51.66, and the right to a hearing in certain circumstances at § 51.70(a).

The proposed rule in § 51.62(a)(1) also removes the reference to § 51.28 concerning passports for minors, thereby removing the Department's discretion to revoke in circumstances where a U.S. passport may be denied under § 51.28. Once parental consent is properly given and a passport issued, the Department has consistently taken the position that such a properly issued passport may not be revoked upon a subsequent withdrawal of parental consent.

The proposed rule in § 51.70(b) revises the non-exhaustive list of provisions under which a hearing will not be provided if the Department denies, restricts, revokes, cancels or invalidates a passport or Consular Report of Birth Abroad under §§ 51.60(a), 51.60(f), 51.60(g), 51.61(a), 51.62(b), 51.62(c)(3), 51.62(d), or 51.64, such that it is consistent with other revisions made as a part of this notice. Section 51.60(a) refers to instances where the Department may not issue a passport because the applicant is in default on a repatriation loan or certified to be in arrears of child support. In accordance with § 51.60(f), the Department may deny an application if the individual has failed to provide his or her social security number on a passport application, or purposefully provides an incorrect number. In accordance with § 51.60(g), the Department shall not issue a passport to a covered sex offender as defined by 22 U.S.C. 212b(c)(1). Section 51.61(a) specifies that the Department may not issue a passport to an applicant subject to imprisonment or supervised release as a result of a federal or state felony drug offense, if the

individual used the passport or crossed an international border in committing the offense. Sections 51.62(b) and 51.62(c)(3) address where the Department revokes a passport, or cancels a Consular Report of Birth Abroad, after determining the individual is not a U.S. national, or revokes the passport after being on notice that an individual's certificate of citizenship or naturalization has been cancelled.

Under § 51.62(d), the Department revokes a U.S. passport for individuals convicted of illicit sexual conduct under 18 U.S.C. 2423, during the covered period defined by 22 U.S.C. 212a, and who used a passport or crossed an international border in committing the offense. Section 51.64 refers to specially validated passports for travel to restricted areas.

The proposed rule amends § 50.7(d), which currently includes procedures for cancellation of Consular Reports of Birth Abroad and hearings for such cancellations, to include a reference to § 51.60 through § 51.74.

The proposed rule in § 51.65(a) – (c) notes that the procedures for providing notification of denials, revocation, or cancellation of passports also applies to Consular Reports of Birth Abroad, and specifies in proposed § 51.65(c) that the Department may exercise its discretion to administratively re-open a previously filed passport or Consular Report of Birth Abroad application in order to issue the passport or Consular Report of Birth Abroad.

In order to provide the public with additional information regarding the denial/revocation review hearing process, the proposed rule also provides further details and requirements for the conduct of review hearings and specifies that the set of circumstances for which hearings may be held include certain cancellations of Consular Reports of Birth Abroad. The proposed rule provides at § 51.70(e) that the individual requesting the hearing may obtain one continuance of up to ninety days upon written request; and advises at § 51.71 that the Department will provide copies of the evidence relied upon in denying, revoking, or cancelling the passport or Consular Report of Birth Abroad prior to the hearing. It specifies in § 51.71(a) that the hearing officer will generally be a Department employee from the Bureau of Consular Affairs and that the hearing officer makes only preliminary findings of fact and recommendations and submits them to the Deputy Assistant Secretary for Passport Services, or his or her designee in the Bureau of Consular Affairs. The proposed rule in § 51.71(b)-(g) specifies the location of the hearing, and that failure to appear – either in person or through an attorney – at the hearing constitutes an abandonment of the request for the hearing; that there is no right to subpoena witnesses or to conduct discovery under the Federal Rules of Civil Procedure; and that passport hearings are not formal administrative hearings under the Administrative Procedure Act (APA). The Department is aware of no statute requiring that the provisions of 5 U.S.C. 554 apply to the hearing, and the

Department has determined that such procedures will not be used. In addition, the proposed rule provides that individuals requesting hearings are responsible for the costs of any interpreters, who must be duly certified; and confirms that written briefs may be submitted prior to the hearing, but are not required. Proposed § 51.71(h) specifies that the purpose of the hearing is to provide the affected individual with an opportunity to challenge the Department's decision; that the burden of production at the hearing is on the Department; and that the affected individual bears the burden of persuasion at the hearing to prove by a preponderance of the evidence that the Department improperly revoked the passport, denied the passport application, or cancelled the Consular Report of Birth Abroad based on the facts at the time such action was taken. The proposed rule in § 51.72 notes that the hearing officer's preliminary findings and recommendation shall not be considered part of the record unless adopted by the Deputy Assistant Secretary for Passport Services or his or her designee. The proposed rule in § 51.73 adds "interpreter" to the list of individuals able to be present at the hearing, and changes "official reporters" to "the reporter transcribing the hearing." Under the proposed rule in § 51.74, the final decision is made by the Deputy Assistant Secretary for Passport Services, or his or her designee, based on his or her review of the record of the hearing, findings of fact and recommendations of the hearing officer, and legal and policy considerations he or she deems relevant.

The proposed rule also amends § 50.11 to include further instruction on where to submit an appeal arising out of a denial of an application for a certificate of identity.

## **Regulatory Findings**

### Administrative Procedure Act

The Department is publishing this rule as a proposed rule, with 60 days for public comments.

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

The Department certifies that this proposed rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and Executive Order 13272, section 3(b), as the rule being amended covers only individuals.

### The Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking. 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 adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 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 proposed rule does not result in any such expenditure nor will it significantly or uniquely affect small governments.

#### Executive Orders 12372 and 13132: Federalism

This proposed rule does 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 12372 and 13132.

#### Executive Orders 12866 and 13563

The Department has reviewed this proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866, and determined that the benefits of the proposed rule justify its costs.

The Department does not consider the proposed rule to be an economically significant regulatory action within the scope of section 3(f)(1) of the Executive Order. The Department has considered this proposed rule in light of Executive

Order 13563 and affirms that this proposed rule is consistent with the guidance therein.

The proposed rule revises the Department's determination of when a passport is considered invalid when a passport is revoked or a Certificate of Loss of Nationality is approved. Further, the proposed rule presents the public with additional information regarding passport and Consular Report of Birth Abroad denial, cancellation and revocation hearings. These changes supply the public with more details regarding the place, requirements, procedures and purpose of such hearings. The proposed rule also provides the public with further instruction on where to submit an appeal arising out of a denial of an application for a certificate of identity.

The proposed rule provides further information to the public about the procedures for cancelling a Consular Reports of Birth Abroad. The proposed rule also notifies the public of the Department's statutory obligation to deny or revoke U.S. passports for certain convicted sex offenders as codified at 22 U.S.C. 212a. The Department finds that this proposed rulemaking implements Congressional intent as reflected in the Immigration and Naturalization Act, and that the benefits of the proposed rulemaking outweigh any costs to the public. The Office of Information and Regulatory Affairs has designated this proposed rule as non-

significant within the meaning of Executive Order 12866. Consequently, no actions are required pursuant to Executive Order 13771.

#### Executive Order 12988: Civil Justice Reform

The Department has reviewed the proposed rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

#### Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments.

The Department has determined that this proposed rule will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

#### Paperwork Reduction Act of 1995.

This proposed rule does not revise or impose any collections of information requirements subject to the PRA.

#### **List of Subjects in 22 CFR Part 50**

Citizenship and Naturalization.

#### **List of Subjects in 22 CFR Part 51**

Administrative practice and procedure; Drug traffic control; Passports and visas; Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, the Department proposes to amend 22 CFR parts 50 and 51 as follows:

**PART 50 – NATIONALITY PROCEDURES**

1. The authority section of part 50 continues to read as follows:

**Authority:** 22 U.S.C. 2651a; 8 U.S.C. 1104 and 1401 through 1504.

2. Amend § 50.7 by revising paragraph (d) to read as follows:

**§50.7 Consular Report of Birth Abroad of a Citizen of the United States of America.**

\* \* \* \* \*

(d) A Consular Report of Birth Abroad may be cancelled in accordance with applicable provisions in 22 CFR 51.60 through 51.74.

3. Amend § 50.11 by revising paragraph (b) to read as follows:

**§50.11 Certificate of identity for travel to the United States to apply for admission.**

\* \* \* \* \*

(b) When a diplomatic or consular officer denies an application for a certificate of identity under this section, the applicant may submit a written appeal to the Secretary through the U.S. embassy or consulate where the individual applied for the certificate of identity, stating the pertinent facts, the grounds upon

which U.S. nationality is claimed, and his or her reasons for considering that the denial was not justified.

## **PART 51 -- PASSPORTS**

4. The authority section of part 51 is revised to read as follows:

**Authority:** 8 U.S.C. 1504; 18 U.S.C. 1621, 2423; 22 U.S.C. 211a, 212, 212a, 212b, 213, 213n (Pub. L. 106–113 Div. B, Sec. 1000(a)(7) [Div. A, Title II, Sec. 236], 113 Stat. 1536, 1501A–430); 214, 214a, 217a, 218, 2651a, 2671(d)(3), 2705, 2714, 2721, 3926; 26 U.S.C. 6039E; 31 U.S.C. 9701; 42 U.S.C. 652(k) [Div. B, Title V of P. L. 103–317, 108 Stat. 1760]; E.O. 11295, FR 10603; Pub. L. 114-119, 130 Stat. 15; Sec. 1 of P. L. 109–210, 120 Stat. 319; Sec. 2 of P. L. 109–167, 119 Stat. 3578; Sec. 5 of P. L. 109–472, 120 Stat. 3554; P. L. 108–447, Div. B, Title IV 118 Stat. 2896; P. L. 108–458, 118 Stat. 3638, 3823.

5. Amend § 51.4 by revising paragraph (g)(1) and adding paragraph (g)(8) to read as follows:

### **§51.4 Validity of passports.**

\* \* \* \* \*

(g) \*\*\*

(1) The Department approves the revocation notification pursuant to § 51.65(a); or

\* \* \* \* \*

(8) The Department approves a Certificate of Loss of Nationality for the passport holder pursuant to § 50.40 and 8 U.S.C. 1481.

6. Revise the heading to Subpart E to read as follows:

Denial, Revocation, and Restriction of Passports and Cancellation of Consular Reports of Birth Abroad

7. Amend § 51.60 by adding paragraphs (h) and (i) to read as follows:

**§51.60 Denial and restriction of passports.**

\* \* \* \* \*

(h) The Department may not issue a passport, except a limited validity passport for direct return to the United States or in instances where the Department finds that emergency circumstances or humanitarian reasons exist, in any case in which the Department is notified by the Attorney General that, during the covered period as defined by 22 U.S.C. 212a:

(1) The applicant was convicted of a violation of 18 U.S.C. 2423, and

(2) The individual used a passport or passport card or otherwise crossed an international border in committing the underlying offense.

(i) In appropriate circumstances, where an individual's passport application is denied or passport revoked consistent with this part, the Department may issue a limited validity passport good only for direct return to the United States.

8. Section 51.62 is revised to read as follows:

**§ 51.62 Revocation or limitation of passports and cancellation of Consular Reports of Birth Abroad.**

(a) The Department may revoke or limit a passport when:

(1) The bearer of the passport may be denied a passport under 22 CFR 51.60 or 51.61 or any other applicable provision contained in this part;

(2) The passport was illegally, fraudulently or erroneously obtained from the Department; or was created through illegality or fraud practiced upon the Department; or

(3) The passport has been fraudulently altered or misused.

(b) The Department may revoke a passport when the Department has determined that the bearer of the passport is not a U.S. national, or the Department is on notice that the bearer's certificate of citizenship or certificate of naturalization has been cancelled.

(c) The Department may cancel a Consular Report of Birth Abroad when:

(1) The Consular Report of Birth Abroad was illegally, fraudulently or erroneously obtained from the Department, or was created through illegality or fraud practiced upon the Department;

(2) The Consular Report of Birth Abroad has been fraudulently altered or misused; or

(3) The Department has determined that the bearer of the Consular Report of Birth Abroad is not a U.S. national, or the Department is on notice that the bearer's certificate of citizenship has been cancelled.

(d) The Department shall revoke a U.S. passport in any case in which the Department is notified by the Attorney General, that during the covered period as defined by 22 U.S.C. 212a:

(1) The applicant was convicted of a violation of 18 U.S.C. 2423, and

(2) The individual used a passport or otherwise crossed an international border in committing the underlying offense.

(3) Notwithstanding paragraph (d)(1) and (d)(2), the Department may issue a limited validity passport for direct return to the United States.

9. Revise § 51.65 as follows:

**§ 51.65 Notification of denial, revocation or cancellation of passports and Consular Reports of Birth Abroad.**

(a) The Department will send notice in writing to any person whose application for issuance of a passport or Consular Report of Birth Abroad has been denied, whose passport has been revoked, or whose Consular Report of Birth Abroad has been cancelled. The notification will set forth the specific reasons for the denial, revocation or cancellation and, if applicable, the procedures for review available under 22 CFR 51.70 through 51.74.

(b) An application for a passport or Consular Report of Birth Abroad will be denied if an applicant fails to meet his or her burden of proof under the applicable regulations or otherwise does not provide documentation sufficient to establish entitlement to a passport or a Consular Report of Birth Abroad, or does not provide additional information as requested by the Department within the time provided in the notification by the Department that additional information is required.

Thereafter, if an applicant wishes the Department to adjudicate his or her claim of entitlement to a passport or Consular Report of Birth Abroad, he or she must submit a new application, supporting documents, and photograph, along with all applicable fees.

(c) The Department may, in its sole discretion, administratively re-open a previously filed passport or Consular Report of Birth Abroad application in order to issue a passport or Consular Report of Birth Abroad.

10. Revise § 51.66 to read as follows:

**§ 51.66 Surrender of passport and/or Consular Report of Birth Abroad.**

The bearer of a passport that is revoked or of a Consular Report of Birth Abroad that is cancelled must surrender it to the Department or its authorized representative upon demand.

11. Revise § 51.70 to read as follows:

**§51.70 Request for hearing to review certain denials and revocations.**

(a) A person whose passport has been denied or revoked under 22 CFR 51.60(b)(1) through (10), 51.60(c), 51.60(d), 51.61(b), 51.62(a)(1), or 51.62(a)(2), or whose Consular Report of Birth Abroad is cancelled under § 51.62(c)(1) or 51.62(c)(2), may request a hearing to review the basis for the denial, revocation, or cancellation, provided that the Department receives such a request, in writing, from such person or his or her attorney within 60 days of his or her receipt of the notice of the denial, revocation, or cancellation. Failure to timely request a hearing means the denial, revocation, or cancellation is the Department's final action.

(b) The provisions of §§ 51.70 through 51.74 do not apply to any action of the Department denying, restricting, revoking, cancelling or invalidating a passport or Consular Report of Birth Abroad, or in any other way adversely affecting the ability of a person to receive or use a passport or Consular Report of Birth Abroad, for reasons not set forth in § 51.70(a), including, as applicable, those listed at:

- (1) Section 51.60(a) (instances where the Department may not issue a passport, except for direct return to the United States);
- (2) Section 51.60(f) (failure to provide a social security number, or purposefully providing an incorrect number);
- (3) Section 51.60(g) (denial of passports to certain convicted sex offenders);
- (4) Section 51.61(a) (denial of passports to certain convicted drug traffickers);
- (5) Section 51.62(b) (revocation of passports for non-U.S. nationals or where a certificate of citizenship or naturalization has been cancelled);
- (6) Section 51.62(c)(3) (cancellation of a Consular Report of Birth Abroad upon the Department's determination that the bearer is not a U.S. national or where a certificate of citizenship has been cancelled);
- (7) Section 51.62(d) (revocation of passports issued to certain convicted sex offenders);
- (8) Section 51.64 (specially validated passports);
- (9) Any other provision not listed at § 51.70(a).

(c) If a timely request for a hearing is made by a person seeking a hearing in accordance with these regulations, the Department will make reasonable efforts to hold the hearing within 90 days of the date the Department receives the request.

(d) Within a reasonable period of time prior to the hearing, the Department will give the person requesting the hearing written notice of the date, time and place of the hearing and copies of the evidence relied on in denying, revoking, or cancelling the passport or Consular Report of Birth Abroad.

(e) The person requesting the hearing may obtain one continuance, not to exceed an additional 90 days, upon written request. The request for a continuance must be received by the Department as soon as practicable and in no case less than five business days prior to the scheduled hearing date. Any further continuances are within the sole discretion of the Department.

12. Revise § 51.71 to read as follows:

**§51.71 The hearing.**

(a) The Department will name a hearing officer, who will generally be a Department employee from the Bureau of Consular Affairs. The hearing officer will make only preliminary findings of fact and submit recommendations based on the record of the hearing, as defined in 22 CFR 51.72, to the Deputy Assistant Secretary for Passport Services, or his or her designee, in the Bureau of Consular Affairs.

(b) The hearing shall take place in Washington, D.C. or, if the person requesting the hearing is overseas, at the appropriate U.S. diplomatic or consular

post. The person requesting the hearing must appear in person or with or through his or her attorney. Failure to appear at the scheduled hearing will constitute an abandonment of the request for a hearing, and the Department's revocation, cancellation or denial will be considered the Department's final action.

(c) Any attorney appearing at a hearing must be admitted to practice in any state of the United States, the District of Columbia, or any territory or possession of the United States, or be admitted to practice before the courts of the country in which the hearing is to be held.

(d) There is no right to subpoena witnesses or to conduct discovery.

However, the person requesting the hearing may testify in person, offer evidence in his or her own behalf, present witnesses, and make arguments at the hearing. The person requesting the hearing is responsible for all costs associated with the presentation of his or her case, including the cost of interpreters, who must be certified in accordance with standards established for federal courts under 18 U.S.C. 1827. The Department may present witnesses, offer evidence, and make arguments in its behalf. The Department is responsible for all costs associated with the presentation of its case.

(e) The hearing is informal and permissive. As such, the provisions of 5 U.S.C. 554 et seq. do not apply to the hearing. Formal rules of evidence also do not apply; however, the hearing officer may impose reasonable restrictions on

relevancy, materiality, and competency of evidence presented. Testimony will be under oath or by affirmation under penalty of perjury. The hearing officer may not consider any information that is not also made available to the person requesting the hearing, the Department, and made a part of the record of the proceeding.

(f) If any witness is unable to appear, the hearing officer may, in his or her discretion, accept an affidavit or sworn deposition testimony of the witness, the cost for which will be the responsibility of the requesting party, subject to such limits as the hearing officer deems appropriate.

(g) The person requesting the hearing and the Department of State may submit written briefs or argument prior to the hearing, but it is not required. The hearing officer will specify the date and schedule for the parties to submit written briefs, should they choose to do so.

(h) The purpose of the hearing is to provide the person requesting the hearing an opportunity to challenge the basis for the Department's decision to deny or revoke the passport, or cancel the Consular Report of Birth Abroad. The burden of production is on the Department, and the Department shall provide the evidence it relied upon in revoking or denying the passport, or cancelling the Consular Report of Birth Abroad, prior to the hearing. The burden of persuasion is on the person requesting the hearing, to prove by a preponderance of the evidence that the Department improperly revoked the passport or denied the passport application, or

cancelled the Consular Report of Birth Abroad, based on the facts and law in effect at the time such action was taken.

13. Revise § 51.72 to read as follows:

**§51.72 Transcript and record of the hearing.**

A qualified reporter, provided by the Department, will make a complete verbatim transcript of the hearing. The person requesting the hearing or his or her attorney may review and purchase a copy of the transcript directly from the reporter. The hearing transcript and all the information and documents received by the hearing officer, whether or not deemed relevant, will constitute the record of the hearing. The hearing officer's preliminary findings and recommendations are deliberative, and shall not be considered part of the record unless adopted by the Deputy Assistant Secretary for Passport Services, or his or her designee.

14. Revise § 51.73 to read as follows:

**§51.73 Privacy of hearing.**

Only the person requesting the hearing, his or her attorney, an interpreter, the hearing officer, the reporter transcribing the hearing, and employees of the Department concerned with the presentation of the case may be present at the hearing. Witnesses may be present only while actually giving testimony or as otherwise directed by the hearing officer.

15. Revise § 51.74 to read as follows:

**§51.74 Final decision.**

After reviewing the record of the hearing and the preliminary findings of fact and recommendations of the hearing officer, and considering legal and policy considerations he or she deems relevant, the Deputy Assistant Secretary for Passport Services, or his or her designee, will decide whether to uphold the denial or revocation of the passport or cancellation of the Consular Report of Birth Abroad. The Department will promptly notify the person requesting the hearing of the decision in writing. If the decision is to uphold the denial, revocation, or cancellation, the notice will contain the reason(s) for the decision. The decision is final and is not subject to further administrative review.

Carl C. Risch,  
Assistant Secretary of State for Consular Affairs,  
Department of State.

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