

have an impact on a substantial number of small entities.

The Department also has determined, however, that the impact on small entities affected by the proposed rule will not be significant. First, the effect of the proposed rule will be to allow agencies and persons the flexibility to choose to be accredited or approved or to act as supervised providers. Supervised providers are not required to become accredited or approved and thus they can largely avoid the economic impact of becoming accredited or approved. Second, certain types of very small providers, specifically home study and child background study preparers, are exempt. Third, the IAA and the regulations provide for a tiering system that includes a special temporary accreditation procedure just for small agencies (defined in the IAA as agencies providing services in less than 100 intercountry adoption cases a year). Small agencies eligible for temporary accreditation will pay less in accreditation fees than applicants for full accreditation and will not be required to meet the standards for full accreditation. Fourth, the IAA and the regulations use an accreditation model, and a substantial compliance structure that provides agencies and persons with ample opportunity to correct deficiencies before accreditation or approval is denied. Thus, the accreditation model used in this proposed rule allows for the majority of the standards to be performance-based. Substantial compliance, which is typical of regulations based on an accreditation scheme, inherently provides for regulatory flexibility because entities are not required to comply perfectly with every single standard. Overall, these four features of the proposed regulations minimize the burden on small entities.

Finally, the Department notes that failing to establish an accreditation/approval process under the Convention and the IAA could adversely affect small entities by closing off opportunities for intercountry adoptions with countries party to the Convention. Thus, there are major benefits for adoption service providers, as well as birth parents, adoptive parents, and children, from an accreditation and approval process designed to comply with the Convention. Many members of the public advocated during the preliminary input phase that the Department should complete these proposed regulations as quickly as possible to minimize the risk of other Convention countries refusing to work with U.S. adoption service providers to place children with U.S. parents.

Accordingly, the Department hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although the Department does not think these regulations will have a significant economic impact on a substantial number of small entities, it would like to solicit comment from the public on the following questions: (1) Will most small agencies be eligible for temporary accreditation under the criteria provided in subpart N? (2) How many agencies are likely to seek temporary accreditation rather than full accreditation? (3) What are accrediting entities likely to charge the agencies for the temporary accreditation process? (4) What are the estimated costs agencies will have to expend to comply with the standards in Subpart N? (5) Will small agencies be negatively impacted if they are unable to qualify for temporary accreditation? It would be helpful if commenters supply information and data to support their comments on these enumerated issues.

Under Executive Order 13272, an agency must notify the SBA of draft rules that may have a significant economic impact on a substantial number of small entities. These proposed rules were submitted to the Office of Advocacy for the SBA for review and comment prior to publication of the rules, as required by Executive Order 13272.

B. 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 will 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 import markets.

C. 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, including cost-benefit and other analyses, 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.

Section 4 of UFMA, 2 U.S.C. 1503, excludes legislation necessary for implementation of treaty obligations. The IAA falls within this exclusion because it is the implementing legislation for the Convention. In any event, this rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year. Moreover, because this rule will not significantly or uniquely affect small governments, section 203 of the UFMA, 2 U.S.C. 1533, does not require preparation of a small government agency plan in connection with it.

D. Executive Order 13132: Federalism

A rule has federalism implications under Executive Order 13132 if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The federalism implications of the proposed regulation in light of the requirements of the IAA are discussed in Section IV paragraph (D) of the Preamble. In light of that analysis, the Department finds that this regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that this rule does not have sufficient federalism implications to require consultations or to warrant the preparation of a federalism summary impact statement under section 6 of Executive Order 13132.

E. Executive Order 12866: Regulatory Review

Under section 3(f) of Executive Order 12866, proposed regulations that meet the definition of “significant regulatory action” generally must be submitted to OMB for review. Section 3 of Executive Order 12866 exempts from this requirement “rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving import or export of non-defense articles and services.” These rules, through which the Department provides for the conduct of U.S. Central Authority responsibilities under the Convention, directly pertain to foreign affairs functions of the United States. On the other hand, they were expressly made subject to notice and comment rulemaking requirements under the APA by section 203(a)(3) of the IAA.