

The proposed rule adopts a minimum period of 75 years for the preservation of Convention records. Promulgation of this rule will further compliance with Article 30(1) of the Convention, which requires that provision be made for the preservation of information about a child's origin, including the identity of the child's parents and about the child's medical history. While such information will primarily be in the child's adoption record, some may also be in a child's Convention record. The 75-year period is consistent with the current record preservation period for records held by the Department and DHS that are similar to Convention records. The preservation requirement will extend to Convention records regarding three kinds of adoptions covered by the Convention:

- (1) Adoptions involving a child immigrating to the United States;
- (2) Adoptions involving a child emigrating from the United States; and
- (3) Adoptions involving two other countries party to the Convention.

A minimum period of 75 years was considered adequate to ensure the availability of Convention records during the lifetime of the adopted person, when matters for which the records may be needed are likely to arise. At the same time, the 75-year period should ensure that the costs and paperwork burden of retaining records are not incurred unnecessarily by retaining them beyond their likely usefulness.

The 75-year period will begin to run (for all three kinds of adoptions covered by the Convention) on the date that the first document or entry specifically related to the adoption is included in the Convention record. Additional subsequent entries to the record will thus be subject to a slightly shorter retention period than the first entry, but the difference is not likely to be significant in a typical adoption case in which most of the records would be entered within the first one or two years of the adoption.

This proposed rule will also create and reserve a new part 97 of title 22 of the CFR. The Department anticipates using part 97 to establish regulations governing adoptions under the Convention.

### III. Regulatory Review

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

The Department of State has reviewed this regulation, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, and, pursuant to 5 U.S.C. 605(b), certifies that it will not have a

significant economic impact on a substantial number of small entities. Executive Order 13272 therefore is inapplicable.

#### *B. 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 under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. The 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, or innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export 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. This regulation will not have such effects, and therefore 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 the import or export of non-defense articles and services.” This rule, through which the Department provides for the implementation of the Convention, directly pertains to foreign affairs functions of the United States. Although the Department does not consider this rule to be a “significant regulatory action” within the meaning of the Executive Order 12866, the Department has consulted with the INS (now part of DHS) during the formulation of the rule. The rule was sent for review to OMB.

#### *F. Executive Order 12988: Civil Justice Reform*

The Department has reviewed these proposed regulations 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. The Department has made every reasonable effort to ensure compliance with the requirements in Executive Order 12988.

#### *G. The Paperwork Reduction Act (PRA) of 1995*

Under the PRA, 42 U.S.C. 3501 *et seq.*, agencies are generally required to submit to OMB for review and approval collection of information requirements imposed on “persons” as defined in the PRA. These regulations impose retention requirements only on the Department of State and DHS, and do not impose any information collection requirements on “persons.” Therefore, the requirements of the PRA do not apply.

#### **List of Subjects in 22 CFR Part 98**

Adoption and foster care; International agreements; reporting and record-keeping requirements.

Accordingly, the Department proposes to add a new part 98 of title 22 of the CFR, chapter 1, subchapter J, to read as follows:

#### **PART 98—INTERCOUNTRY ADOPTION/CONVENTION RECORD PRESERVATION**

Sec.

98.1 Definitions