action in accordance with 5 U.S.C. 706. When a temporarily accredited agency petitions a United States district court to review the adverse action of an accrediting entity, the accrediting entity will be considered an agency as defined in 5 U.S.C. 701 for the purpose of judicial review of the adverse action.

§ 96.107 Adverse action against a temporarily accredited agency by the Secretary.

(a) The Secretary may, in the Secretary's discretion, withdraw an agency's temporary accreditation if the Secretary finds that the agency is substantially out of compliance with the standards in § 96.104 and the accrediting entity has failed or refused, after consultation with the Secretary, to take appropriate enforcement action.

(b) The Secretary may also withdraw an agency's temporary accreditation if the Secretary finds that such action;

(1) Will protect the interests of children;

(2) Will further U.S. foreign policy or national security interests; or

(3) Will protect the ability of U.S. citizens to adopt children under the Convention.

(c) If the Secretary withdraws an agency's temporary accreditation, the Secretary will notify the accrediting entity.

§ 96.108 Review of the withdrawal of temporary accreditation by the Secretary.

(a) There is no administrative review of a decision by the Secretary to withdraw an agency's temporary accreditation.

(b) Section 204(d) of the IAA (42 U.S.C. 14924(d)) provides for judicial review of final actions by the Secretary. Withdrawal of temporary accreditation, which is analogous to cancellation of accreditation, is a final action subject to judicial review.

(c) An agency whose temporary accreditation has been withdrawn by the Secretary may petition the United States District Court for the District of Columbia, or the United States district court in the judicial district in which the agency is located, to set aside the action pursuant to section 204(d) of the IAA (42 U.S.C. 14924(d)).

§ 96.109 Effect of the withdrawal of temporary accreditation by the accrediting entity or the Secretary.

(a) If an agency's temporary accreditation is withdrawn, it must cease to provide adoption services in all Convention cases and must execute the plan required by § 96.104(k) under the oversight of the accrediting entity, and transfer its Convention adoption cases and adoption records to an accredited agency, approved person, or a State archive, as appropriate.

(b) Where the agency is unable to transfer such Convention cases or adoption records in accordance with the plan or as otherwise agreed by the accrediting entity, the accrediting entity will so advise the Secretary who, with the assistance of the accrediting entity, will coordinate efforts to identify other accredited agencies or approved persons to assume responsibility for the cases, and to transfer the records to other accredited agencies or approved persons, or to public domestic authorities, as appropriate.

(c) When an agency's temporary accreditation is withdrawn or reinstated, the Secretary will, where appropriate, take steps to inform the Permanent Bureau of the Hague Conference on Private International Law.

(d) An agency whose temporary accreditation has been withdrawn may continue to seek full accreditation or may withdraw its pending application and apply for full accreditation at a later time. Its application for full accreditation must be made to the same accrediting entity that granted its application for temporary accreditation. If that entity is no longer providing accreditation services, it may apply to any accrediting entity with jurisdiction over its application.

(e) If an agency continues to pursue its application for full accreditation or subsequently applies for full accreditation, the accrediting entity may take the circumstances of the withdrawal of its temporary accreditation into account when evaluating the agency for full accreditation.

§ 96.110 Dissemination and reporting of information about temporarily accredited agencies.

The accrediting entity must disseminate and report information about agencies it has temporarily accredited as if they were fully accredited agencies, in accordance with subpart M of this part.

§ 96.111 Fees charged for temporary accreditation.

(a) Any fees charged by an accrediting entity for temporary accreditation will include a non-refundable fee for temporary accreditation set forth in a schedule of fees approved by the Secretary as provided in § 96.8(a). Such fees may not exceed the costs of temporary accreditation and must include the costs of all activities associated with the temporary accreditation cycle (including, but not limited to, costs for completing the temporary accreditation process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities). The temporary accreditation fee may not include the costs of site visit(s). The schedule of fees may provide, however, that, in the event that a site visit is required to determine whether to approve an application for temporary accreditation, to investigate a complaint or other information, or otherwise to monitor the agency, the accrediting entity may assess additional fees for actual costs incurred for travel and maintenance of evaluators and for any additional administrative costs to the accrediting entity. In such a case, the accrediting entity may estimate the additional fees and may require that the estimated amount be paid in advance, subject to a refund of any overcharge. Temporary accreditation may be denied or withdrawn if the estimated fees are not paid.

(b) An accrediting entity must make its schedule of fees available to the public, including prospective applicants for temporary accreditation, upon request. At the time of application, the accrediting entity must specify the fees to be charged in a contract between the parties and must provide notice to the applicant that no portion of the fee will be refunded if the applicant fails to become temporarily accredited.

Dated: January 13, 2006.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

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DEPARTMENT OF STATE

22 CFR Parts 97 and 98

[Public Notice 5297]

RIN 1400–AB69

Intercountry Adoption—Preservation of Convention Records

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule finalizes the proposed rule published on September 15, 2003 to implement the records preservation requirements of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA). The IAA requires that the Department of State (the Department) issue rules to govern the

preservation of Convention records held by the Department and the Department of Homeland Security (DHS). This final rule is the same as the proposed rule, except for non-substantive technical corrections. It requires the Department and DHS to maintain Convention records for 75 years and defines the term Convention record.

DATES: This rule is effective March 17, 2006. Information about the date the Convention will enter into force is indicated in the text of the final rule.

FOR FURTHER INFORMATION CONTACT: For further information, contact Corrin Ferber at 202–736–9172 or Anna Mary Coburn at 202–736–9081. 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:

Background

The Department published a proposed rule to be codified as part 98 of title 22 of the CFR addressing the Department's and DHS's preservation of Convention records under the Convention and the IAA in the **Federal Register** on September 15, 2003 (68 FR 54119). A companion proposed rule, to be codified as part 96 of title 22 of the CFR, was published in the **Federal Register** on the same day (68 FR 54064). The companion proposed rule covered the accreditation and approval of agencies and persons under the Convention and the IAA. We received public comments regarding both proposed part 96 and proposed part 98. This notice discusses comments received expressing concerns about the preservation of Convention records requirements of part 98 of title 22 of the CFR. Discussion of public comments on records issues not directly related to preservation of Convention records, such as preservation of and access to adoption records, may be found in the **SUPPLEMENTARY INFORMATION** published with the final rule for part 96 of title 22 of the CFR.

This final rule fulfills the Department's responsibility to promulgate regulations addressing the preservation of Convention records. Section 401(a) of the IAA requires that the Department issue regulations that establish procedures and requirements for the preservation of Convention records, implementing in part the Convention's Article 30(1) requirement that each Convention country ensure preservation of information concerning any child whose adoption is subject to the Convention. The proposed rule for part 98 provided for a 75-year preservation period and defined Convention record. The notice of the proposed rule contained a detailed Preamble giving the statutory basis for issuing the rule, and reasons for the Department's decisions in the rule.

The Department is adopting the proposed rule as final, with no changes in response to public comment. The Department did make several technical changes to § 98.2, to avoid redundancy. These changes have no substantive effect on the rule. The final rule defines Convention record and adopts the same definition of Convention that the Department is adopting today in § 96.2 of part 96 of title 22 of the Code of Federal Regulations (CFR), as well as other terms from part 96 such as the Secretary, DHS, Case Registry, Convention country, adoption records, agency, person, and public body. It also requires the Department and DHS to preserve Convention records for 75 years. This final rule also reserves a new part 97 of title 22 of the CFR to cover intercountry adoption procedures under the Convention.

This rule does not address or change otherwise applicable Federal law governing access to Convention records. Access to Convention records retained by the Department or DHS will be controlled by Federal law governing access to records held by Federal agencies, particularly by the Freedom of Information Act (5 U.S.C. 522 (1966)) and the Privacy Act (5 U.S.C. 552(a) (1974)).

The final rule also does not create a new Federal rule governing access to adoption records—i.e., records held by entities outside the Federal Government. The term adoption record is defined in § 96.2 of part 96 of title 22 of the CFR to include records generated, received, or in the custody of agencies and persons or State public entities. State law will continue to govern access to adoption records held by agencies, persons, or public entities including State courts as provided for by section 401(c) of the IAA.

Discussion of Comments and Major Reasons for Retaining Proposed Rule as the Final Rule

Section 98.1—Definition of Convention Record

The Term ''Convention Record''

We have not changed the definition of Convention record from that provided in the proposed rule. The final rule continues to follow the IAA definition of Convention record by including only records pertaining to adoptions under the Convention that are generated, received, or in the custody of two Federal agencies—the Department or DHS. The final rule also continues to clarify that the definition of Convention record includes not only records pertaining to Convention adoptions in which a child is immigrating to or from the United States, but also Convention adoptions involving two other countries party to the Convention in which the United States performs some Central Authority function. For example, there could be an instance where adoptive parents from Canada gain custody of a child from Lithuania (two Convention countries), and move to the United States during the post-placement period, during which a disruption occurs. In such a case, the Department, as the U.S. Central Authority, may become involved in consultations with Lithuania pursuant to Convention Article 21. Any resulting records would be treated as Convention records.

Comment: One commenter thinks that the responsibility for the preservation of all records relating to Convention adoptions is best granted to the Department and DHS because records could be lost when an agency or person closes or experiences a natural disaster such as a flood or fire. It suggests placing the responsibility for preserving all records related to Convention adoptions with a government office. Another commenter expresses concern that DHS would be responsible for retaining and maintaining Convention records.

Response: There are two kinds of records: Convention records and adoption records. Adoption records are defined, in the final rule for part 96 of title 22 of the CFR, generally as records in the physical possession of agencies, persons, and the States. Convention records are records in the physical possession of two Federal Government agencies—the Department and DHS. The IAA provides no statutory authority for the Department to require custodians of adoption records to transfer such records to the Federal government, nor does it provide any basis for the Department to store and preserve such non-Federal records. In fact, the Department believes such an approach would be inconsistent with § 401(c) of the IAA.

With respect to the question of whether all Convention records should be consolidated in the custody of the Department (or DHS), that is an internal agency management issue beyond the scope of this rule. This rule addresses only the length of time for which Convention records will be held, not how the Department and DHS will store Convention records. Any future decision by the Department and DHS to

consolidate record holdings is a question of agency management, to be addressed in negotiations between the two agencies. Thus, the Department is not modifying this section of the rule requiring both DHS and the Department to preserve their records involving a Convention adoption.

Comment: One commenter states that no definition of Convention record has been provided.

Response: There is a detailed definition of Convention record in § 98.1(b).

Preservation Requirement of 75 Years

After reviewing the public comments and consultations with DHS, the rule keeps a minimum period of 75 years for the preservation of Convention records. While no change was made in response to public comment, non-substantive technical changes were made to § 98.2 to delete redundancies.

Section 98.2—Preservation of Convention Records

Comment: Commenters expressed concerns about the record preservation time period. A commenter suggests changing the retention period from 75 years to 99 years. One adoptive parent suggested 100 years; other commenters agree with the 75-year time period; other commenters want Convention records to be retained permanently. Commenters wanted the preservation time period to be extended from 75 years to 100 years on the grounds that individuals are living longer than before and may seek out information available in a Convention record after the 75-year time period has expired. Several commenters also asked that the preservation time period be extended so that the information will be available to the children and future generations of the adoptee.

Response: The Department has retained the 75-year preservation period for Convention records. This time period is sufficient to preserve Convention records for a period comparable to current life expectancies, while also ensuring that the costs and burden of maintaining records are not incurred unnecessarily by retaining Convention records beyond their likely usefulness. It is also consistent with the current record preservation period for vital records held by the Department and DHS that are similar to Convention records. While the Department appreciates the desire of some members of the public to preserve Convention records permanently so that they will be available to the children of adoptees, preserving Convention records permanently would create too great a recordkeeping burden. For further explanation of the 75-year preservation requirement, including information on when the 75-year time period begins to run, please see the Preamble to the Proposed Rule (68 FR 54119).

Comment: One parent suggests that the Department require countries of origin to retain records of all Convention adoptions. Other commenters suggest establishing a penalty to prohibit anyone but the adoptee, adoptive parents, or birthparents from accessing the information in the country of origin.

Response: The Department is making no change in response to these comments, which go beyond the scope of the proposed rule. In any event, the Department has no authority to force countries of origin to retain Convention records or adoption records or to impose penalties on a country of origin's Central Authorities or other public authorities if such country provides access to records to others besides adoptees, birthparent(s), or adoptive parent(s). The country of origin's laws will govern access to and preservation of records in the custody of the country of origin's Central Authority or other public authorities.

Comment: One parent believes adoption records should be open to all adult adoptees. A commenter supports opening adoption information to all adult adoptees or to the birth parents if the adoptee is a minor. Another commenter recommends the creation of an ombudsman office, which would provide information as needed to adoptive parent(s), birthparent(s), and adoptees.

Response: The Department is making no change to the proposed rule because part 98 does not regulate access to adoption records or Convention records. It has one narrow focuš≤uto establish the length of time the Department and DHS must preserve Convention records (records in custody of the Department or DHS). Section 401(c) of the IAA specifically provides that applicable State law will continue to determine whether adoption records are open to adoptees, birth parent(s), or adoptive parent(s). Similarly, it is outside the scope of this regulation to establish an ombudsman office to handle inquiries about access to records in the possession of entities other than the Department or DHS.

Comment: A commenter suggests that Convention records be held by a Federal entity, such as the National Archives. The commenter believes Convention records should be considered Federal records and made accessible through FOIA.

Response: If a record is a Convention record (not an adoption record), it is by definition a record preserved by the Department or DHS, both of which are Federal entities. Pursuant to the IAA, access to Convention records will be governed by applicable Federal law, including the FOIA and the Privacy Act. The question of where the Department and DHS will physically store Convention records is an operational issue that is not within the scope of this regulation. We have not addressed where Convention records will be physically held in this rule because we want to maintain the flexibility to take advantage of any advances in the rapidly changing field of information storage technology.

Regulatory Review

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 and that Executive Order 13272 is inapplicable.

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. 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.

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.

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.

Executive Order 12866: Regulatory Review

Under section 3(f) of Executive Order 12866, 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 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 DHS during the formulation of the rule. The rule was sent for review to OMB.

Executive Order 12988: Civil Justice Reform

The Department has reviewed this final 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. The Department has made every reasonable effort to ensure compliance with the requirements in Executive Order 12988.

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 information retention requirements only on the Department of State and DHS and thus the requirements of the PRA do not apply.

List of Subjects in 22 CFR Part 98

Adoption and foster care, International agreements, Reporting and recordkeeping requirements.

■ Accordingly, the Department amends title 22 of the CFR, chapter I, subchapter J, as follows:

PART 97—INTERCOUNTRY ADOPTION—ISSUANCE OF HAGUE CONVENTION CERTIFICATES AND DECLARATIONS IN CONVENTION ADOPTION CASES [RESERVED]

■ 1. Part 97 is added and reserved to read as set forth above.

■ 2. Part 98 is added to read as follows:

PART 98—INTERCOUNTRY ADOPTION—CONVENTION RECORD PRESERVATION

Sec.

Authority: Convention on Protection of Children and Co-operation 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)); Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954.

§ 98.1 Definitions.

As used in this part:

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

(b) Convention record means any item, collection, or grouping of information contained in an electronic or physical document, an electronic collection of data (including the information contained in the Case Registry), a photograph, an audio or video tape, or any other information storage medium of any type whatever that contains information about a specific past, current, or prospective adoption covered by the Convention (regardless of whether the adoption was made final) that has been generated or received by the Secretary or the Department of Homeland Security (DHS). Convention record includes a record, generated or received by the Secretary or DHS, about a specific adoption case involving two Convention countries other than the United States in connection with which the Secretary or DHS performs a Central Authority function.

(c) Such other terms as are defined in 22 CFR 96.2 shall have the meaning given to them therein.

§ 98.2 Preservation of Convention records.

Once the Convention has entered into force for the United States, the Secretary and DHS will preserve, or require the preservation of, Convention records for a period of not less than 75 years. For Convention records involving a child who is immigrating to the United States and Convention records involving a child who is emigrating from the United States, the 75-year period shall start on the date that the Secretary or DHS generates or receives the first Convention record related to the adoption of the child. For an intercountry adoption or placement for adoption involving two Convention countries other than the United States, the 75-year period shall start on the date that the Secretary or DHS generates or receives the first Convention record in connection with the performance of a Central Authority function.

Dated: January 13, 2006.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

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