

**DEPARTMENT OF STATE****22 CFR Part 96****[Public Notice: 10732]****RIN 1400-AE39****Intercountry Adoptions: Regulatory Changes to Accreditation and Approval Regulations in Intercountry Adoption****AGENCY:** Department of State.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of State (the Department) is proposing revisions to the Code of Federal Regulations to amend requirements for accreditation and authorization by the United States to provide adoption services in intercountry adoption cases. This proposed rule amends regulations to provide clarification, updating, or other adaptation of familiar accreditation and approval standards for intercountry adoption. It includes long-awaited provisions for intercountry adoption by relatives. The new regulations simplify and streamline the process by limiting the number of adoption services the primary provider must provide and capitalizing on the adoptive family's understanding of local culture and institutions. It provides a comprehensive definition of relative to clarify the relationships that are encompassed in the amendments to the accreditation rule. Also featured in this proposed rule is a new focus on supporting children and families in the event their adoptive placement disrupts.

**DATES:** The Department will accept comments on the proposed regulation until January 19, 2021.

**ADDRESSES:** Internet: You may view this proposed rule and submit your comments by visiting the *Regulations.gov* website at [www.regulations.gov](http://www.regulations.gov), and searching for docket number DOS-2020-0048. Submitting comments electronically through this website is the preferred method.

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**I. Introduction**

This proposed rule amends part 96 to provide clarification, updating, or other adaptation of familiar accreditation and approval standards for intercountry adoption. These changes derive from observations and experience with the practical operation of the accreditation and approval regulations in the fourteen years since the regulations went into effect. The Department engages in systematic review and analysis of its regulatory responsibilities. Since the inception of the accreditation scheme in 2006 and entry into force of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention) in 2008, we established ongoing formal and informal interactions with accrediting entities (AEs), adoption service providers (ASPs), and other stakeholders such as adoptive parents, law enforcement officials, and foreign Central Authorities. Through each of these interactions we seek greater insight into our work and the effectiveness of the tools we employ to achieve the objectives of our national law and regulations and the Convention itself.

Annually, we engage in an even deeper review process as we perform an evaluation of the work of our AEs, culminating in a senior level review meeting with AE and Department leaders. This review process allows for reflection and a chance to establish new benchmarks, to update and correct AE policies and procedures, as well as refine our own standard operating procedures. Through this analytical process we become aware of deficiencies in the regulations or areas in which additional information or clarification would be helpful and beneficial for children, their birth parents, and adoptive families in intercountry adoption.

*Background and Context*

The accreditation regulations flow from the Intercountry Adoption Act of 2000 (IAA), which implements the Convention. The United States signed the Convention shortly after its completion in 1993, enacted the IAA implementing the Convention in 2000, and published implementing regulations, including the accreditation regulations in 22 CFR part 96, in 2006. With these milestones achieved, the United States deposited its instrument of ratification to the Convention in December 2007, and the Convention entered into force with respect to the United States on April 1, 2008. Effective in 2014, the Intercountry Adoption Universal Accreditation Act (UAA) extended the standards in this regulation to all adoption service providers providing intercountry adoption services. For additional information about the development of the Convention, the IAA, and the accreditation regulations, each is treated in detail in the preambular discussion of the proposed and final rules in 2003 and 2005, respectively. Those accounts are found in 68 FR 54064 (September 15, 2003); and in 71 FR 8064 (February 15, 2006).

*Changes in the Number and Characteristics of Intercountry Adoptions Worldwide*

In 2008, when the Convention entered into force for the United States, U.S. citizens adopted 17,456 children through intercountry adoptions, down from a historical peak of 22,884 intercountry adoptions in 2004. In FY 2019, the most recent year for which the Department has published data, U.S. citizens adopted 2,971 children through intercountry adoption. It is important to note that the trend in declining adoptions is not a trend experienced by the United States alone. All receiving countries have experienced this decline, and to similar degree. Most experts agree that this decline reflects numerous factors, many of which are discussed in the narratives to our Annual Report to the Congress.<sup>1</sup>

Accompanying this decline in numbers has been a change in the characteristics of children adopted through intercountry adoption. Dr. Peter Selman of Newcastle University has studied worldwide intercountry adoption trends dating back to before World War II, with more attention given to adoption over the past 25 years. In 2015 he reported that adoption of

<sup>1</sup> [https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt\\_ref/adoption-publications.html](https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-publications.html).

children with “special needs” are becoming more common, as are adoptions of older age children and of sibling groups. Dr. Selman notes that while there remains a lack of agreement on what exactly the term “special needs” covers, the trend first became obvious to him over the period from 2005 to 2009 with respect to adoptions from China. In 2005, the percentage of children adopted from China with special needs was 9% for all adoptions in all receiving countries. By 2007, the number of adopted children from China with special needs had risen to 30%. By 2009, 49% of all adopted children from China were children with special needs.

This trend was echoed in a report by a U.S. coalition of child welfare organizations that said many countries of origin are increasingly limiting intercountry adoption to older children or those who may have special needs. In addition, many children are remaining in orphanages for longer periods of time prior to family placement, and have increased risk factors for emotional, behavioral, and developmental difficulties. Citing Department of State statistics, the coalition noted that in 1999 over 50% of adopted children were under the age of 1 year; whereas in 2013 the number of adopted children under 1 year had dropped to less than 8%.

#### *A Viable Option for Eligible Children in Every Country*

The Department is dedicated to maintaining intercountry adoption as a viable option for eligible children in every country, world-wide. To do so, it engages in sustained bilateral diplomacy advocating that countries of origin establish procedures and essential safeguards that allow intercountry adoption for children who cannot find permanent family solutions in their country of origin. The Department also oversees the accreditation system through which the United States establishes these safeguards.

The proposed changes in this NPRM largely represent essential revisions to make the accreditation regulations more effective given the purposes of the Convention and implementing legislation, noted above, working for the best interests of children and enhanced viability of intercountry adoption world-wide.

## **II. Proposed Changes to 22 CFR Part 96**

### *A. Adoption by Relatives*

The Department is pleased to introduce provisions relating to the intercountry adoption of relatives in the new subpart R. Due to the reasons

discussed below, the relative adoption provisions are the most universally requested addition from the public over the last ten years. Section 502(a) of the IAA (42 U.S.C. 14952) authorizes the Department to establish alternative regulations for adoption of children by individuals related to them by blood, marriage, or adoption to the extent consistent with the Convention. In support of this addition, we added the following definition of *relative* to the section on definitions, § 96.2:

*Relative*, for the purposes of the alternative procedures for the intercountry adoption of relatives found in subpart R, means any of the following: Parent, step-parent, brother, step-brother, sister, step-sister, grandparent, aunt, uncle, half-brother to the child’s parent, half-sister to the child’s parent, half-brother, half-sister, or the U.S. citizen spouse of the person with one of these qualifying relationships with the child. The relationship can exist by virtue of blood, marriage, or adoption.

The new regulations on adoption by relatives in subpart R simplify the role of the primary provider in such cases by limiting the number of adoption services the primary provider is required to provide. Of the six adoption services, the required services primary providers would continue to need to provide for adoptions by relatives are: *Performing a background study on a child or a home study on a prospective adoptive parent(s), and reporting on such a study* (service 3); *Monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption* (service 5); and *When necessary because of a disruption before final adoption, assuming custody and providing (including facilitation the provision of) child care or any other social service pending an alternative placement* (service 6). However, primary providers would not generally be required to provide: *Identifying a child for adoption and arranging an adoption* (service 1); *Securing the necessary consent to termination of parental rights and to adoption* (service 2); and *Making non-judicial determinations of the best interests of a child and the appropriateness of an adoptive placement for the child* (service 4). We are proposing this exemption because in many cases, these services may be provided by the adoptive family and/or local authorities, without the prior assistance of a primary provider. The Department notes, however, that the primary provider is responsible for any other adoption services (including services 1, 2, or 4) it actually provides or facilitates in the

case. All services in relative adoption cases must be provided in accordance with § 96.44.

The most persistent concerns expressed to the Department about the need for regulations relating to adoption by relatives are to reduce costs and to simplify the process associated with such adoptions such that they take less time. More specifically, stakeholders have indicated that the current regulations do not reflect the fact that families adopting relative children abroad already provide most of the key adoption services in such cases, handling many of the administrative tasks associated with an adoption abroad. Stakeholders also point out that many relative cases involve an emergent situation in which a child or children are suddenly bereft of their parents and action on the case needs to be taken quickly.

In addition to these concerns, ASPs have informed the Department that many relative cases occur in countries where few if any U.S. ASPs have adoption programs or expertise. The new provisions are thus crafted in a way to allow primary providers to rely on the intimate knowledge of family members in the country of origin. It is the Department’s hope that this approach will make it less burdensome for ASPs to provide services in relative adoptions and thus encourage ASPs to serve as primary providers in relative adoption cases. This would relieve families trying to adopt their relative child abroad of the burden of contacting many ASPs seeking one willing to work in a country where it has little if any expertise. Often in such cases, when the family cannot find an ASP to serve as a primary provider in their case, they end up having to make alternative arrangements for the child, which may not be in the child’s best interests. In some cases, the U.S. relative feels compelled to relocate to the child’s country of origin or residence to reside with her/him in challenging conditions separated from family members in the United States, thus introducing additional stresses into a situation in which emotions and resources are already strained.

Prospective adoptive parents adopting a relative child abroad must fulfill the same 10 hours of training and preparation required in § 96.48(a) (which are unchanged in the proposed rulemaking) as in all other intercountry adoption cases. The proposed amendment in § 96.100(c) provides that this training should be completed prior to finalizing the adoption or grant of legal custody. The proposed amendment also recognizes that in some relative

cases, the adoption may be finalized before a primary provider becomes involved in the case. In such cases the primary provider “must verify such training requirements have been met as soon as practicable.”

#### *B. Amendments Relating to Accrediting Entities and Accreditation*

Primary responsibility for accreditation and approval of ASPs, and monitoring and oversight of ASPs’ compliance with the IAA, the UAA, and their implementing regulations, rests not with the Department but with one or more designated accrediting entities (AEs) (42 U.S.C. 14922). The IAA does not permit a U.S. Federal agency to assume the role of AE. An AE must be either a nonprofit organization (as described in section 501(c)(3) of the Internal Revenue Code), or a public entity other than a federal entity, that otherwise meets the requirements of the regulations. In accordance with these IAA principles, in 2006 the Department designated two AEs to accredit or approve U.S. adoption service providers who, upon such accreditation or approval, were authorized to provide adoption services in intercountry adoption cases subject to the Convention. Since 2008, both Department-designated AEs have withdrawn from that role. The Department designated the current accrediting entity, the Intercountry Adoption Accreditation and Maintenance Entity, Inc. (IAAME), in 2017.

The IAA and existing § 96.4 provide that there can be more than one designated AE and that AE roles be defined in the Secretary’s written agreement with AEs. Proposed revisions to various sections of the rule clarify how responsibilities may be allocated among AEs if more than one AE is designated. Revisions to § 96.6(c) and (d) clarify that an AE must have the capacity to monitor and take appropriate adverse action against ASPs, even if the ASP was initially accredited or approved by a different AE. Revisions to §§ 96.8 and 96.9 clarify that the fees charged by an AE must relate to the functions it is authorized to provide, whether or not that AE is authorized to perform all AE functions. The Department notes that in the event multiple AEs are in operation at one time, under § 96.4 the Department can expressly designate the jurisdiction of each AE, thus preventing jurisdiction overlap, competition or unfair forum shopping for agencies seeking or holding accreditation. The Department also notes that § 96.27(d) helps ensure that each AE uses methods that are

“substantially the same” as those of any other designated AEs.

Revisions to § 96.8 introduce a new element to the Secretary’s approval of AE fee schedules. The new provisions require the Department to publish proposed fee schedules in the **Federal Register** for public comment and review before approving the schedules. The Department is introducing this requirement to enhance transparency on an issue of concern noted by some stakeholders, and expects this to result in increased trust between the AE and the ASPs subject to AE fees.

The amendment to § 96.10(c)(2) modifies the criteria for finding an AE out of substantial compliance with the accreditation regulations, to include where an AE has accredited an ASP whose performance results in intervention by the Secretary.

Section 96.24(a) lists particular skills and expertise that AE evaluators must have in order to effectively carry out an AE’s responsibility to evaluate an ASP for accreditation or approval. The proposed amendments to § 96.24(a) adds finance and accounting to this list of skills and expertise, reflecting AE experience that indicates that such skills are important to be able to evaluate an ASP’s compliance with financial requirements under the regulations.

Proposed edits to § 96.26(b) clarify that information collected by an AE in the course of its work, including during monitoring and oversight, may be shared with appropriate tribal and foreign authorities. Section 96.26(d), formerly the last sentence of § 96.26(c), now appears as an independent subsection clarifying that an AE must maintain a complete and accurate record of all information it receives related to an agency or person and the basis for an AE’s decisions concerning the agency or person. New § 96.7(a)(9) imposes the same requirement as to other records relating to an AE’s role.

Proposed revisions to § 96.92 increase the frequency by which an AE is required to disseminate information to the public about the accreditation status of ASPs and adverse actions taken with respect to ASPs, thus ensuring that the most current information is regularly made available to the public. An AE typically disseminates this information via its website, which is updated regularly. Revisions to §§ 96.43 and 96.94 require expanded reporting to the Secretary about disruption, dissolution, and unregulated custody transfers, because of the potential risk of harm to children and the potential repercussion to U.S. bilateral relationships associated with this conduct. These revisions

impose no additional requirements on ASPs or the public.

Subpart F’s section on “Scope” was formerly § 96.29, and under this proposal will be found at § 96.28. The new § 96.29 is entitled “Compliance with all Applicable Laws” and explicitly includes as standards within subpart F, upon which an AE can rely in making accreditation, approval, renewal, and maintenance decisions, certain existing regulatory requirements. These provisions include the prohibition on unauthorized provision of adoption services, the requirement to provide essential information to an AE, and compliance with the laws of each domestic and foreign jurisdiction in which an ASP operates when providing adoption services, and with the Convention, the IAA, and the UAA. A proposed amendment to § 96.45(a) makes more explicit the existing requirement that primary providers ensure that when using foreign supervised providers to provide adoption services, those foreign supervised providers do so in accordance with the Convention, the IAA and the UAA.

#### *C. Prevention of Child Buying and Protection of Prospective Adoptive Parents*

##### *Child Care Contributions*

The proposed rule revisions to §§ 96.36(a) and 96.40(c)(4) aim to prohibit ASPs from charging prospective adoptive parents (PAPs) to care for a particular child prior to completion of the intercountry adoption process. Payment of monthly support fees to ASPs or local providers for the care of children where the intercountry adoption process is not complete can create an incentive to illicitly recruit children into institutions, while also providing a disincentive for expeditious processing of an adoption. In some cases, the fees charged to PAPs have been significantly higher than the normal costs associated with the care of children in the foreign country. AEs have identified these situations via ongoing internal research and monitoring, including comparisons of like-services provided by other ASPs as well as reviews of databases related to the provision of certain services. These practices substantially and unpredictably increase the costs of adoption for PAPs, who are not in a position either to object to the charges or to expedite the completion of the adoption, and may result in a situation where an adoptive family pays for long-term care of a child who is not in fact eligible for intercountry adoption.

The proposed revisions do not prohibit the transfer of funds to a foreign country to provide food, medical care or other provisions for children. ASPs may still include fees for food, medical care or other provisions for children in their program costs and may charge such fees to parents as part of their program fees. However, those fees must be structured as broader assistance to a country's child welfare efforts, must be dissociated from the care of a specific child, must be charged only once during the adoption process, and must be disclosed to PAPs as part of the ASP's overall fee disclosure. These proposed regulations place the responsibility for transferring and monitoring the use of such funds on the ASPs, and prohibit ASPs from shifting this responsibility to PAPs, who may be vulnerable to pressure or exploitation. The proposed revisions also require ASPs to verify that the fees are not unreasonable for the country where the services are provided and are used for their intended purposes. While there is not a formal process AEs use for analyzing or auditing the reasonableness of the fees charged, the Department notes that AEs use administrative data, including publicly available resources and data.

To increase transparency and provide an AE with an effective tool for assessing an ASP's compliance with this prohibition on child buying, revisions to § 96.36(b) would require the ASP to retain a record of all foreign financial transactions, to enhance transparency and provide a means of identifying potential child buying.

#### Prohibited Compensation Practices

Section 96.34 prohibits the payment of incentive or contingent fees that likewise create an incentive to recruit children for intercountry adoption, and gives effect to this prohibition by requiring ASPs to compensate all service providers only for services rendered, and only on a wage, salary, or fee-for-service basis that is not unreasonably high in connection with the actual cost of services. Proposed revisions to § 96.34 address known practices used to circumvent this limitation, such as making these excessive payments to associates of foreign supervised providers or other intermediaries who do not themselves provide adoption services, by extending this limitation on unreasonable compensation to any entity involved in an intercountry adoption.

#### Transparency of Fees

The Department has received feedback from prospective adoptive parents who have noted that there are

discrepancies in the amount of information that agencies and persons provide about their fees, making prospective adoptive parents' selection process difficult. The Department has determined that many prospective adoptive parents would benefit from an increased level of transparency about what to expect during the intercountry adoption process. This is in part because currently, many prospective adoptive parents fear that because some fees are described in very general terms, there may be undisclosed costs hidden from view. Undisclosed fees may stretch adoptive family resources so thin as to cast doubt on whether the family will be able to complete the adoption. To address these concerns, the proposed revisions in §§ 96.39 and 96.40 enhance the general public's knowledge of ASP practice, and insulate PAPs from being charged unexpected or excessive fees at points in the adoption process where they are vulnerable to such overcharging. The proposed changes increase the amount and frequency of information disclosure relating to fees to the general public and to an ASP's prospective clients. In particular, the proposed rule in §§ 96.39(a) and 96.40 would require ASPs to disclose a schedule of expected fees and expenses on their websites, and to provide an itemized disclosure of fees to PAPs before providing any adoption services. The rule also would require ASPs to distinguish fees for services provided in the United States from those provided in a foreign country.

Along these lines of fee transparency, § 96.46(b)(7) and (8) are proposed to be amended to prohibit direct billing of PAPs by foreign supervised providers. Before this proposed change, foreign supervised providers could require direct payments for services abroad from PAPs, thus exposing PAPs to potential abuses such as overcharging. Under these changes, the primary provider would be responsible for assessing fees from PAPs and transmitting the fees to the foreign supervised provider. The change is also found at § 96.40(c)(6).

The Department specifically requests comment on the cost of maintaining fee transparency under this proposal.

#### Segregation of Client Funds

Proposed provisions in § 96.40(f) would reinforce the principle that client funds received but not yet expended for agreed upon services are not part of the ASP's assets, and so must be segregated from both their general operating funds and the required two months' reserve fund.

#### D. Post-Placement Monitoring and Post-Adoption Services

ASPs play a critical role in supporting families in the post-placement and post-adoption periods. Although the majority of intercountry adoptions are successful, some families experience adjustment challenges, discovery of unknown medical or emotional needs, or other issues that may lead to instability of the placement or the adoption.

In addition to the existing requirements relating to supervising a child's placement until final adoption and providing counseling in the event that a placement is in crisis, the proposed rule requires ASPs to take all appropriate measures to inform the parents of local and State laws and legal resources pertaining to disruption of a placement and appropriate measures for making another placement of a child, to explain the risks and implications of disruption for the child, and to provide resources to address potential future crises. ASPs would be required to provide specific points of contact for support in the event an adoptive family faces difficulties that place permanency at risk.

The Department has found that the generalized requirements related to providing support to the family experiencing disruption under current § 96.50 did not provide sufficient information to PAPs to serve their needs nor those of the children. Proposed § 96.50(c) through (h) delineate an ASP's specific responsibilities for responding to disruptions that occur while the PAPs and the child are still in the country of origin. These requirements are aimed at ensuring the PAPs are supported in the process of considering a possible disruption and are informed about the implications of a disrupted placement for the child and the family, including any siblings.

For disruptions in the United States, ASPs will be required to notify the Department and, in placing the child with a new family, to provide information about sibling relationships, outstanding post-placement reporting requirements, and the child's citizenship status, all of which are critical for the child's long-term safety and welfare. For disruptions in the country of origin, ASPs will be required to notify local authorities, as well as the Department, of the disruption and to ensure the safe and timely transfer or temporary placement of the child consistent with local law.

Proposed amendments to § 96.50(f) would impose new requirements for notification to child welfare authorities, the foreign competent or Central

Authorities, and the Secretary, of a disruption or a family's intent to disrupt. Such notification will help to ensure the child's safety and welfare and will allow the Department to facilitate communication with foreign authorities to mitigate the potential repercussions to a country's willingness to continue to engage with the United States with respect to intercountry adoption. Throughout this section, there are revisions intended to address increasing awareness of the parents' responsibilities to the child and an ASP's responsibilities to both the child and the family.

Proposed amendments to § 96.51(b) provide for informing the PAPs whether post-adoption services, including any post-adoption reporting, are included in the agency's or person's fees, and if not, enumerate the cost the agency or person would charge for such services and whether it would provide services if an adoption is dissolved.

#### *E. Submission of Complaints*

An amendment to § 96.2 permits complaints to be submitted electronically as well as in writing. Amendments to § 96.41(b) and (e) allow for complaints to be submitted by any individual or entity, and extend the protection against retaliation to any individual or entity who makes a complaint, or otherwise expresses a grievance, provides information to an AE on the ASP's performance, or questions the conduct of or expresses an opinion about the performance of an ASP.

#### *F. Reasonable Efforts To Find a Timely and Qualified Adoptive Placement in Outgoing Cases*

Article 4 of the Convention provides that a Convention adoption may occur when competent authorities have determined that the child is adoptable and that, after possibilities for placement of the child within the State of origin have been given due consideration, the authorities have determined that an intercountry adoption is in the child's best interests. The new provisions in § 96.54 would require that ASPs demonstrate reasonable efforts to find a timely adoptive placement for the child in the United States in all cases (except for certain cases involving adoption by relatives). This revision will ensure that ASPs provide the information on the child to interested PAPs in the United States in an effort to find a timely placement, in accordance with Article 4 of the Convention. These efforts must be documented for a court's review. With this information, courts would be better

able to determine whether a placement abroad is in the best interests of the child.

Also, the provision relating to adoption of siblings in § 96.54(d)(2) was expanded to make diligent efforts to place siblings together consistent with relevant laws in most States and with best practices within the child welfare community. While not directly addressed in the IAA or the Convention, placing siblings together whenever possible is consistent with the notion discussed at the time of the drafting of the Convention that termination of parental rights does not include termination of other familial relationships.

#### *G. Provisions Relating to Corporate Governance and Oversight*

The proposed amendment to § 96.32(c) requires the ASP to maintain for 25 years records relating to the selection, monitoring, and oversight of foreign supervised providers, financial transactions to and from foreign countries, and records relating to responding to complaints. The proposed amendment to § 96.32(e)(4) requires the ASP to disclose to an AE certain related entities, to the extent they provided services to or receive payment from the ASP.

A period of 25 years was chosen to ensure that ASP records relevant to a particular adoption remain available to adopted children who, after becoming adults, wish to access their records in order to learn about their adoption and their origins.

#### *H. Procedures and Requirements for Adverse Action by the Secretary, Including for Challenges to Such Adverse Action*

The proposed rule would amend provisions in subpart L regarding adverse action by the Secretary. The proposed rule sets forth procedural requirements for providing ASPs with adequate notice of any adverse action taken by the Secretary and the reasons for such action and describes the administrative process by which an ASP may contest such adverse action. Upon exercising these authorities for the first time in 2016, the Department determined that it would be appropriate to supply the public with relevant details as to the place, requirements, procedures and purpose of such notice and proceedings.

Section 96.83(b) describes the notification and supporting evidence to be provided to the ASP in the event of suspension or cancellation of accreditation by the Secretary, and §§ 96.88(a) and 96.89(a) describe the

notification and supporting evidence to be provided to the ASP in the event of a temporary or permanent debarment. New §§ 96.84(a) and (b) would set forth procedures by which an ASP can object to a suspension or cancellation as unjustified, and the standards by which the Department will review such an objection. This is distinguished from a petition for relief from suspension or cancellation based upon the ASP's correction of deficiencies, which is now addressed in § 96.84(c).

Section 96.85(c) provides that the Secretary shall ordinarily give notice of a proposed finding of debarment and an opportunity to be heard before the debarment takes effect, and may make the debarment effective immediately only where the Secretary finds that doing so is necessary to address a substantial risk of significant harm to children and families. Section 96.88 sets forth in detail the procedures, requirements, time frames, and standards of review that apply where an ASP objects to a proposed debarment, and § 96.89 sets forth the corresponding procedures, requirements, time frames, and standards of review for post-debarment review where an ASP objects to a debarment that is effective immediately. The time frames under § 96.89 are somewhat shorter, in recognition of the fact that the ASP is unable to operate during the pendency of a post-debarment challenge, but the Department anticipates that the appointed hearing officer will extend the default time frames if the parties so request.

Clarifying changes to § 96.85 specify that the Secretary may consider a detrimental effect on the ability of U.S. citizens to adopt children in the future in considering whether an ASP's continued accreditation is not in the best interests of children and families, and that an ASP that is debarred ceases to be accredited upon debarment. The proposed § 96.88 includes information as to how an ASP subject to debarment may request an administrative hearing on the matter.

Section 96.83(c) adds USCIS, state licensing authorities, and foreign central authorities to the list of entities to be notified in the event of adverse action by the Secretary, and conforming changes are made to such notification provisions throughout this subpart.

#### *I. Miscellaneous Amendments*

The requirement to retain a completed FBI Form FD-258 contained in § 96.35(c)(4) and (d)(2) have been removed, as this form cannot be used for the purpose stated in those provisions under current FBI guidance.

A proposed amendment to § 96.25(c) allows an AE to take adverse action for “engag[ing] in deliberate destruction of documentation, or provid[ing] false or misleading documents or information.”

We propose to add a definition to the list of terms in § 96.2 for “authorization.” This term derives from a key provision in the Hague Adoption Convention, and until now it was missing from our collection of key terms and definitions.

We propose to augment the definition of the term *best interests of the child* to include the situation in which the child is outside of the United States, in which case best interests shall be interpreted in light of the objects of the Convention without reference to any particular U.S. State.

Another new proposed term added to the definitions in § 96.2 is *unregulated custody transfer*, which refers to the placement of a child with a person or entity with the intent of severing the child’s existing parent-child or guardian-child relationship without taking the appropriate steps, both to ensure the child’s safety and permanency and to transfer legal custody or guardianship of the child.

The proposed standards in § 96.37 relate to education and experience requirements for ASP employees. In § 96.37(c), we expand the standard to include not only clinical skills and judgment, but also training in the professional delivery of intercountry adoption services.

Section 96.38 addresses training requirements for social service personnel. Section 96.38(b) adds important topics on which the social service personnel need expertise, to include, among others, the physical, psychological, cognitive, and emotional issues facing children who have experienced trauma, abuse, including sexual abuse, or neglect and other factors with a long-term impact on a child’s social and emotional development. A proposed amendment to § 96.38(d) provides for an exemption from the orientation and initial training of newly-hired employees, if within the last two years they have received such orientation in another organization and are otherwise current in their other training requirements.

At the request of ASPs, we have proposed amendments to § 96.47 with instructions on how an ASP may withdraw its recommendation of PAPs for adoption when it withdraws its approval of the home study.

Minor proposed revisions to the definitions in § 96.2 include simplification of the term *child welfare services* by removing elements

suggestive of adoption services; clarification that the term *public domestic authority* includes “an authority operated by a State, local, or tribal government within the United States or an agent of such government;” and further clarification that the term *public foreign authority* only refers to courts or regulatory bodies operated by the national or subnational governments of a foreign country.

Finally, the Department proposes minor technical edits, including punctuation, to §§ 96.2; 96.4(c); 96.5; 96.6(h); 96.7(a)(4); 96.7(b)(1), 96.7(c); 96.10(c)(6) and (7); 96.12(a); 96.27; 96.33(f); 96.35; 96.39(d); 96.45(b)(9); 96.49(e), (g) and (i); and 96.54(d)(1) and (2) that do not have substantive impacts on accreditation requirements and that removed references to temporary accreditation, which expired in 2010.

### III. Response to Regulatory Reform Solicitation of Comments

On August 7, 2018, the Department published a **Federal Register** document soliciting comments from the public on regulatory reform initiatives as outlined in Executive Order 13777 (“*Enforcing the Regulatory Reform Agenda*”). 83 FR 38669. The Department received comments relating to this proposed rule, which can be accessed at [https://beta.regulations.gov/comment/DOS\\_FRDOC\\_0001-4901](https://beta.regulations.gov/comment/DOS_FRDOC_0001-4901).

In response to the Department’s **Federal Register** document, the Department received comments relating to foreign supervised providers (FSPs) as well as other concerns related to the regulation of intercountry adoption. At the present time, while we acknowledge the concerns identified by the commenter related to oversight of FSPs in certain limited circumstances, in this notice of proposed rulemaking, we are not addressing any regulatory changes to accreditation standards relating to FSPs. We will instead undertake a consultative process on this issue with a wide variety of stakeholders in intercountry adoption and consider the entire range of standards relating to FSPs. Through this consultative process, we will explore solutions for resolving concerns related to FSPs, including those that do not require changes in regulation.

The Department’s responses to the proposed revisions follow:

(a) Proposed change: *Remove §§ 96.35(c)(4) and 96.35(d)(2)*. The Department’s response: These sections have been removed in this proposed rule.

(b) Proposed change: *Amend § 96.8(b)(1) by removing the word “non-refundable.”* The Department disagrees

with the suggested deletion. The Department’s response: AE fees have always been non-refundable to protect an AE’s capacity to perform its roles and functions that they are required to perform by law and their agreement with the Department. An AE is required to charge no more than the fees necessary to perform its functions. AEs monitor ASP activity as a whole, not individual cases, and the expenditure of funds to cover accreditation services is not tied to any individual adoption. Accordingly, the current AE’s schedule of fees was calculated based on its full cost of conducting accreditation responsibilities. This cost was divided by the estimated number of adoptions, based on currently available data, as a way of allocating the AE’s costs across ASPs of significantly different size. If fees were made refundable where an individual case is withdrawn, the per-adoption fee would be correspondingly higher to cover the unchanged cost of accreditation services.

Proposed change: *Amend § 96.8(c) by adding the following sentence at the end of the existing paragraph:* “An accrediting entity must make available to the public its demonstration of compliance with § 96.8(a) and (b), upon request.” The Department’s response: The Department has revised § 96.8(b) as noted in Section II (b), above.

(c) Proposed change: *Re-order paragraphs within § 96.8 and add two new paragraphs as follows:*

(1) *§ 96.8(d):* “An accrediting entity must not charge additional fees for the placement of siblings, when placed for adoption with the same parents at the same time.” The Department’s response: The Department disagrees with this suggestion. The amount of the current AE’s monitoring and oversight fee per adoption case was established based on the projected number of total adoption cases and the AE’s projected expenses for conducting monitoring and oversight activities. At this time, there is insufficient data to allow the AE to create a model that exempts siblings from the monitoring and oversight fee structure. This may be considered in the future when adequate data is available.

(2) *§ 96.8(e):* “If an accrediting entity establishes fees based on the number of prospective adoptive parents an accredited agency or approved person contracts with, such determinations shall take into account the number of applicants who complete adoptions with these adoption service providers.” The Department’s response: The Department disagrees with this suggestion. The current AE’s schedule of fees was designed to cover the projected cost of conducting

accreditation and monitoring and oversight activities for all intercountry adoptions across ASPs and country programs. AEs monitor ASP activity as a whole. The fee model allows ASPs to pay fees incrementally as cases are accepted, rather than paying significantly larger fees as a lump sum at the beginning of the four-year accreditation cycle, and thus ensures that the costs of monitoring are borne proportionately to the number of adoption cases handled by each ASP. If the suggestion were accepted, the AE would be unable to fund its activities for the next four years without immediately assessing large accreditation fees on agencies.

(d) Proposed change: *Amend the beginning of § 96.39(a) to read:* “The agency or person fully discloses in writing to the general public upon request and to prospective client(s) prior to signing a contract.” The Department’s response: The Department disagrees with this suggestion, because the information to be disclosed is readily available even at first contact and thus creates no new burden to produce. Disclosure at first contact also provides a PAP with information it can use in selecting the ASP with which they want to work.

(e) Proposed change: *Amend § 96.49(i) to read:* “The agency or person ensures that any videotapes or photographs taken by the accredited agency or person are identified by the date on which the videotape or photograph was recorded or taken and that they were made in compliance with the laws in the country where recorded or taken.” The Department’s response: We incorporated this suggested revision in the proposed rule; the amended provision only applies to photos taken by accredited or approved ASPs and their foreign supervised providers. The Department made this change in recognition that U.S. providers have limited or no ability to determine when and under what circumstances photos or videos provided by a foreign adoption authority or unaffiliated third party were taken.

(f) Proposed change: *Amend § 96.52(a) to read:* “When requested, the agency or person informs the Central Authority of the Convention country or the Secretary about necessary information regarding a specific adoption case and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.” The Department’s response: The Department understands the concern behind this suggestion and addressed it by modifying the suggested language to

more precisely indicate the circumstances under which an agency or person must inform the Central Authorities about the case. Additionally, we added: In the case of information developed or new information relating to the suitability and eligibility of adoptive parents, inform USCIS, the sole authority for making suitability determinations.

(g) Proposed change: *Strike § 96.52(b)(4)*, because the actions described therein are performed by the Department, not accredited agencies or approved persons. The Department’s response: Rather than deleting this provision, the Department takes the point and adapted it to include “or confirm that this information has been transmitted to the foreign country’s Central Authority or other competent authority by the United States’ Central Authority.

(h) Proposed change: *Amend § 96.52(d) as follows:* “When requested by the Secretary or a foreign Central Authority, the agency or person returns the original home study on the prospective adoptive parent(s) and/or the original child background study to the authorities that forwarded them.” The Department’s response: The amendment has been made to § 96.52(d) after adding the term “original” to it. The Department made the same changes in § 96.55(c) in relation to requests for return of original home studies or child background studies when the transfer of the child has not taken place.

(i) Proposed change: *Strike § 96.52(e)*, as being too broad. The Department’s response: The Department has not accepted this deletion but has modified the language to clarify that the obligation only applies to requirements that the Secretary has previously identified under existing authorities and made known (directly or via an AE) to ASPs.

#### **IV. Timeline for Implementing Changes in the Proposed Rule, if Approved**

Some changes in the proposed rule would become effective 180 days after publication of the final rule. The Department invites comment on the timelines for implementation.

Provisions in § 96.40 relating to fee disclosures would take effect 180 days after publication of the final rule. To comply with the new rule, ASPs will need to change their fee disclosures. The Department believes that this timeframe would allow ASPs to review already available information, determine whether such fees and expenses should be characterized as fees and expenses for services provided in the United States or overseas,

respectively, and begin to provide this information to PAPs.

The Department plans to implement the new alternative procedures for adoption of relatives abroad three months after publication of the final rule.

#### **V. Regulatory Analysis**

##### *Administrative Procedure Act (APA)*

The Department is issuing this rule as a notice of proposed rulemaking (NPRM) as required by the IAA and welcome comments from the public on every aspect of the NPRM.

##### *Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs*

This proposed rule is expected to be an Executive Order 13771 regulatory action. Details about the estimated costs of this proposed rule can be found in the RFA Discussion, below.

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

This section considers the effects that the proposed amendments to the accreditation regulations may have on accredited or approved ASPs as required by the Regulatory Flexibility Act (RFA, 5 U.S.C. *et seq.*, Pub. L. 96–354) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under 5 U.S.C. 553(b). 42 U.S.C. 14923(a)(3) provides that subsections (b), (c), and (d) of 5 U.S.C. 553 apply to this rulemaking. The Department requests information and data from the public that would assist in better understanding the impact of this proposed rule on small entities. The Department also seeks input from the public on alternatives that will accomplish the same objectives and minimize the proposed rule’s economic impact on small entities. Our preliminary initial regulatory flexibility analysis (IRFA) follows.

1. *A description of the reasons why the action is being considered by the Department:* This proposed rule clarifies, updates, or otherwise adapts a limited number of changes to accreditation and approval standards, most of which have been in full operation since 2006. The proposed changes derive from our observation of the rule’s practical operation and from the observations of intercountry adoption stakeholders such as adoptive parents, ASPs, Congressional offices, and law enforcement authorities. Taken

together, these interactions with a broad cross section of organizations, critics, entities, and individuals have allowed us to reflect on potential improvements and regulatory adaptations. Through these changes we want to refine our work to better serve the birth families, adoptive parents, and children whose interests all intersect in the intercountry adoption process.

2. *A succinct statement of the objectives of, and legal basis for, the proposed rule:* The proposed rule supports many of the Department's policy goals. A primary consideration is making the accreditation rule as effective as possible in defining standards essential to protecting the safety and other interests of the participants in intercountry adoption. We aspire to implementing the lofty goals of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Adoption Convention), which include in Article 1: To establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law; and to establish a system of co-operation among Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children. The proposed changes to the accreditation rule focus

on the individual participants in the process. But taking into account that even small changes in the regulations may have a significant impact, each proposed revision also contributes to preservation of intercountry adoption as a viable option for children in need of permanency the world over.

The legal authority to engage in these proposed changes derives from our treaty obligations found in the Adoption Convention and as implemented by the Intercountry Adoption Act of 2000, the Intercountry Adoption Universal Accreditation Act of 2012, and the Secretary's responsibilities to support foreign policy interests of our nation found in the U.S. Constitution.

Another objective of this proposed rule is to be responsive to the adoption community's calls for a different process for adoption by relatives, one that is faster and less costly, while maintaining essential safeguards to protect children and prospective adoptive parents. We share the community's desire to make intercountry adoption more accessible to relatives, which fits squarely into the Department's mission to support the viability of intercountry adoption for children in need as well. We are therefore proposing new relative adoption provisions, consistent with Section 502(a) of the Intercountry Adoptions Act (42 U.S.C. Chapter 143 sec. 14952(a)) (IAA Title V sec. 502(a)) relating to alternative procedures for the

adoption of children by individuals related to them by blood, marriage, or adoption.

3. *A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule will apply:* The RFA defines a "small entity" as a small not-for-profit organization, small governmental jurisdiction, or small business. The RFA requires, with some exceptions, that agencies define small firms according to its size standards. SBA sets size standards by the number of employees or the amount of revenues for specific industries. These size standards are captured in the North American Industry Classification System (NAICS) codes. The work of intercountry adoption ASPs falls under the NAICS code 624110—Child and Youth Services. SBA's standard for a small business within this industry code is an entity with gross revenues of \$11 million or less. Based off of public administrative data supplied by the ASPs themselves and the AE, the total number of entities subject to this rule is 118, as of June 2020. Of this total, 90 meet the SBA definition of small business entity. These firms are grouped based on gross revenues as follows: Gross receipts data were obtained from ASP public filings of IRS form 990, which non-profit organizations under section 501(c)(3) of the Internal Revenue Code are required to submit annually.

TABLE 1—US ACCREDITED/APPROVED ADOPTION SERVICE PROVIDERS GROUPED BY ANNUAL GROSS RECEIPTS, NAICS CODE 624110

	Number of adoption service providers	Percentage of small firms
Firms with Gross Receipts over \$100M–\$500M .....	3	N/A
Firms with Gross Receipts over \$11M–\$100M .....	17	N/A
Small Firms (Gross Receipts up to \$11M) .....	90	100
Firms with Gross Receipts over \$5M–\$11M .....	12	13
Firms with Gross Receipts over \$2M–\$5M .....	17	19
Firms with Gross Receipts over \$1M–\$2M .....	16	18
Firms with Gross Receipts over \$500K–\$1M .....	19	21
Firms with Gross Receipts \$500K and under .....	26	29
Firms for whom we have no financial data .....	8	N/A
<b>Total U.S. Accredited and Approved ASPs .....</b>	<b>118</b>	<b>.....</b>

Data for gross receipts were obtained from ASP public filings of IRS form 990, which non-profit organizations under section 501(c)(3) of the Internal Revenue Code are required to submit annually. The number of ASPs affected by this proposed rule making is very small. Agencies affected by this proposed rule typically provide child-related social services beyond intercountry adoption, though we understand some specialized

exclusively in it. Of the ASPs engaged in intercountry adoption, most (112) are non-profit accredited agencies. Six ASPs are approved persons, which under the IAA are individuals, or for-profit entities. For the approved persons we have no financial data that would allow us to place them more accurately on Table 1. Two other agencies for whom we have no financial data are religious organizations not required to file IRS

form 990, despite their classification as non-profit entities. It is our belief that they would fall within the scope of the small business rubric.

The Department would appreciate receiving feedback about the groupings of ASP firms in this description.

4. *A description of projected reporting, recordkeeping, and other compliance requirements of the proposed rule.* Some of the provisions of



this rule relate to reporting and record keeping. All provisions apply equally to all parts of this group of small firms, but also to the non-small firms that make up the total number of accredited and approved agencies and persons. In Table 2, below, we summarize the impact of the proposed changes, including reporting and record keeping elements and our understanding of the average cost of implementing those provisions.

5. *An identification, to the extent possible, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.* To our knowledge, there are not relevant federal rules that duplicate, or conflict with, the proposed rule.

#### Considering Alternative Approaches Relative Adoptions

The relative adoption provisions illustrate how we approached considering alternative ways to address a need through this regulation. As previously noted, our objective in developing a new process for adoption by relatives was to reduce the cost and the time it takes to bring a relative adoption to a successful conclusion. Also important to us was a process that ASPs would find attractive for serving families with precious few options. Many relative cases arise in countries where there are no well-established intercountry adoption programs, and where few if any ASPs have expertise to work comfortably.

We considered three approaches:

1. No change
2. A minimalist approach in which the primary provider was not required to provide any adoption services in the case, and
3. Sharing services between adoptive families and a primary provider.

*No change:* We rejected the status quo as not acceptable as it achieved none of our goals for relative adoptions. We wanted a change that met the needs of the public and the ASPs and preserved key safeguards in relative cases.

*Minimalist approach:* We looked at various ways of limiting the role of a primary provider in the case to verification of services only, relieving the Primary Provider of the obligation of providing any services, or supervising the provisions of adoption services in the case. We rejected this very minimalist approach and the variations on the minimalist theme we considered because even though they might be cheaper for ASPs and PAPs than the proposed approach, the heightened risks to children, birth families, and adoptive families inherent in a very highly curtailed role for the primary provider

were unacceptable. Taking the minimalist road would allow too much influence by unscrupulous foreign providers on family members and putting them in the way of corrupt officials without allowing for a modicum of oversight.

*Sharing services:* The proposed approach, in which families may provide certain services themselves instead of ASPs, leaving other services to be provided by a primary provider in the case, balances protecting against risks while promoting an efficient and cost-effective process for families. We are requiring the ASP primary provider to provide the home study and the post placement services. These services are the bedrock of social services in our regulations. Accredited ASPs have deep capacity to provide these services independent of special cultural knowledge or foreign bureaucratic know how. Permitting this division of labor in relative adoption cases plays to the strengths of both PAPs and ASPs. And it will reduce the time the ASP must spend on the case and the cost of their work on the case by limiting its scope. Reducing the cost to families will have the additional benefit of encouraging families to consult with a U.S. adoption professional sooner as the case gets underway and thereby avoid pitfalls that result from calling them in at the very tag end of the case. In this instance, the approach we landed on was not the very least costly option, but it will mean significant savings to ASPs and adoptive families alike, while building in effective controls on risks.

#### Segregation of Client Funds

Our objective was to preserve unspent client funds so that they would be available when needed. We have observed and adoptive families have complained loudly when this occurs, that when an ASP is called upon to transfer cases to other agencies for completion (for a wide variety of possible reasons) sometimes those funds are no longer available. In the case of an ASP that has been suspended or lost its accreditation, the ASP is required to implement its case transfer plans, including transferring client funds not yet expended in the client's case. If the ASP was asked to transfer cases and its own finances are in disarray it may be that the coffers are now empty and the client must struggle to force the ASP to return funds or must proceed with the in-progress adoption case with another agency and must need to pay additional fees to do so. We wanted to help prospective adoptive families with a revision to the rule that will put them on protected footing.

There were a range of possible solutions:

1. No change, but work to educate families and ASPs about how to avoid this situation,

2. Imposing highly formalized fiduciary funds physical separation from the agency's funds process (similar to how most law firms do it), or

3. Requiring the segregation without specifying how the ASP should accomplish it, but build in reporting and AE oversight.

*No change:* The concept of separation of client funds from other client funds and ASP funds is not new and has been the subject of at least one law suit in which the court caused an ASP to lose its state license to provide adoption services for comingling client funds with its own. We were concerned that just talking about it and not tying it to some form of accountability would not invigorate enough ASPs to make needed changes. We wanted a solution that promised results.

*Holding unspent client funds in an escrow account:* Physical separation of client from agency funds in an escrow fund managed by a financial institution had its obvious attractions. While producing the highest level of protection for the adoptive families, this was also the most expensive option as most escrow accounts have fees associated with them and may involve administrative hassles to access protected funds on short notice. We liked the level of protection but the cost, especially if multiplied across all clients, was prohibitive.

*Choose your own solution subject to AE verification and adverse action if you fail to put into place effective segregation of funds:* In our interaction with ASPs we learned that there were many possible ways of effectively segregating client funds that reflect ASP management style, financial sophistication, and workforce savvy and budgetary solvency. This solution gave the ASP the greatest leeway to decide which method it preferred while creating accountability for protecting unspent client funds. Potential low cost and increased accountability.

#### Creating Greater Transparency of Fees Charged by ASPs

On several levels, adoption-related fees are a source of friction, competition, and confusion within the adoption community at large. There are many who criticize ASPs for charging high adoption fees. Countries of origin raise this matter with us bilaterally when we speak with them in private, complaining that they don't understand why the fees are so high and what the

funds are used for. To address these concerns and to create greater transparency for prospective adoptive parents, we wanted to propose a change to how ASPs disclose their fees.

The options we considered were:

1. No change,  
2. Create a form that ASPs would be required to use to provide a detailed list of information in a uniform manner with strong penalties for failure to conform, and

3. A hybrid approach somewhere between options (a) and (b).

*No change:* The cheapest option by far. It also does not improve transparency and accountability if we do nothing.

*Create a draconian list of detailed fee information linked to strong sanctions for failure to comply:* This option envisions forcing all ASPs to provide the exact kind of information and to the same level of detail for each country in which the offered adoption services and with strict consequences for noncompliance. Some agencies would favor this approach because it would force a level playing field for ASPs. Some are reluctant to reveal the details of their fees because the don't want to be "outbid" by other ASPs. Others do not want to be pinned down to exact fee levels because they want flexibility to keep up with local conditions. Yet others have used their published fees to provide camouflage for questionable fee practices. This approach is more akin to a licensing context, in which all ASPs must demonstrate the same high level of compliance to retain their license. Our system, by contrast, is an accreditation model in which APS have more leeway to demonstrate conformance with standards of practice and may also have acceptable levels of compliance short of

perfect compliance. We wondered if some agencies would resist compliance to highlight this essential difference between the two models.

*A hybrid approach:* As we fleshed it out, we found that it offered greater transparency for adoptive families, other ASPs and countries of origin alike. It provided a framework for increasing the number of fee particulars that was scalable depending on the kind of intercountry adoption program your agency had, reflecting the complexity of adoptions in specific countries and allowing for streamlining information where appropriate. The key to success, we thought, would lie in getting the main categories right and separating the information in terms of where the service takes place, rather than under general headings of foreign program or domestic program fees. To mitigate the cost of implementation, we envisioned keeping the number of fees to report to a list larger than the status quo but not so detailed as to make conforming with a disclosure requirement too costly to launch or difficult to keep up to date.

#### Calculating Staff Worker Hourly Rates

Using the most recent edition of Bureau of Labor Statistics (BLS) Occupational Employment Statistics (OES),<sup>2</sup> we obtained several estimates for social workers ranging from about \$24 per hour (as an average national wage rate) to nearly \$30 per hour. We went a step further and found the average (mean) of the hourly rate for each state in the category "Social Workers, All Other," as reported in the State by State data sets for OES code 21-1029 of May 18, 2018,<sup>3</sup> the most recent data set available. On this basis, we arrived at an average national hourly

rate of \$30.12, which for ease of calculating we rounded to \$31.

In a similar manner, we captured national wage rates for other staff and management workers from the BLS OES Data sets, including:

(1) Financial Managers,<sup>4</sup> \$70.59/hour (rounded to \$71), whose duties include to plan, direct, or coordinate accounting, investing, banking, insurance, securities, and other financial activities of a branch, office, or department of an establishment;

(2) Bookkeeping, Accounting, and Auditing Clerks,<sup>5</sup> \$20.25/hour (rounded to \$21), whose duties may include to compute, classify, and record numerical data to keep financial records complete; to perform any combination of routine calculating, posting, and verifying duties to obtain primary financial data for use in maintaining accounting records; and to check the accuracy of figures, calculations, and postings pertaining to business transactions recorded by other workers;

(3) Auditors,<sup>6</sup> \$37.89 (rounded to \$38), whose duties include to examine, analyze, and interpret accounting records to prepare financial statements, give advice, or audit and evaluate statements prepared by others; and

(4) Training and Development Specialists,<sup>7</sup> \$31.31 (rounded to \$32), whose duties include to design and conduct training and development programs to improve individual and organizational performance. They may also analyze training needs.

The Department requests public comment on the method used to estimate the cost of compliance with the amendments to this regulation, including the estimates of compensation noted here.

TABLE 2—SUMMARY OF COST DATA IN APPENDIX A TO THE PREAMBLE

[Each item in this summary and in Appendix A is numbered for ease of comparison. The numbered items refer to the items in the Preamble narrative.]

#### Projected Implementation Costs for Small Firms

Year 1 Costs For Each Small Firm:

- Average Cost in the First Year: \$14,165.

Costs For Each Small Firm in Subsequent\* Years:

- Average Cost in Subsequent Years: \$5,274.

\* For more information on subsequent year average costs and the services with which they are associated, see the bottom of this table.

#### Total Projected Implementation Costs for All Firms Regardless of Size

Year 1 Costs For All Firms Taken Together:

- Average Cost in the First Year: \$1,558,095.

Costs in Subsequent Years for All Firms Taken Together:

<sup>2</sup> <https://www.bls.gov/oes/>.

<sup>3</sup> <https://www.bls.gov/oes/2018/may/oes211029.htm>.

<sup>4</sup> <https://www.bls.gov/oes/2018/may/oes113031.htm>.

<sup>5</sup> <https://www.bls.gov/oes/2018/may/oes433031.htm>.

<sup>6</sup> <https://www.bls.gov/oes/2018/may/oes132011.htm>.

<sup>7</sup> <https://www.bls.gov/oes/2018/may/oes131151.htm>.

TABLE 2—SUMMARY OF COST DATA IN APPENDIX A TO THE PREAMBLE—Continued

[Each item in this summary and in Appendix A is numbered for ease of comparison. The numbered items refer to the items in the Preamble narrative.]

- Average Cost in each Subsequent Year: \$580,085.

	Average year 1 \$ costs for 1 small firm	Average first year \$ costs for all small ASP firms	Average first year \$ costs for all ASP firms regardless of size
1. Preamble II–A–1, Subpart R, §§ 96.100–96.101, Adoption by Relatives .....	Reduction in Costs Expected.	Reduction in Costs Expected.	Reduction in Costs Expected.
2. Preamble II–B–1, § 96.43 and 96.94, Additional data points to report in the event of a disruption or dissolution.	93 .....	8,370 .....	10,230.
3. Preamble II–C–2, § 96.36(a), Prohibits payment of expenses for a specific child or as an inducement to release a child for adoption.	610 .....	54,900 .....	67,100.
4. Preamble II–C–3 Initial Year, § 96.36(b), Requires policies and procedures prohibiting the sale of children and incorporates in an employee training.	1,766 .....	158,895 .....	194,205.
4. Preamble II–C–3 Subsequent Years .....	See Table Below.		
5. Preamble II–C–4 Initial Year, § 96.34, No incentive or contingent fees or plans to compensate formally or informally for locating or placing children.	731 .....	65,745 .....	80,355.
6. Preamble II–C–5 Initial Year, § 96.40, Expanded categories of estimated fees and expenses in the United States and abroad associated with an inter- country adoption.	2,123 .....	\$191,025 .....	233,475.
6. Preamble II–C–5 Subsequent Years .....	See Table Below.		
7. Preamble II–C–6 Initial Year, § 96.40(c)(4)(i), Prohibits regular payments for care of a particular child, unreasonably high fees, and fees based on a pe- riod of time it takes to complete adoption.	1,020 .....	91,755 .....	112,145.
8. Preamble II–C–7 Initial Year, § 96.46(b)(7) and (8), Prohibits direct payments to foreign supervised providers. Fees for FSPs paid by the ASP not PAPs.	427 .....	38,385 .....	46,915.
9. Preamble II–C–8 Initial Year, Now located in § 96.40(f), Holding Unspent Cli- ent Funds Separate from ASP Operating Funds.	1,880 .....	169,200 .....	206,800.
9. Preamble II–C–8 Subsequent Year .....	See Table Below.		
10. Preamble II–D–1 Initial Year, § 96.50(c) through (h), Provides increased de- tail on post placement monitoring, notification requirements and time frames for notification when adoption is in crisis.	731 .....	65,745 .....	80,355.
11. Preamble II–D–2, § 96.51(b), Addressing post adoption services in the ASP–PAP service agreement; returning child to COO.	731 .....	65,745 .....	80,355.
12. Preamble II–E–1, § 96.41, ASPs accept all written complaints .....	731 .....	65,745 .....	80,355.
13. Preamble II–F–1, § 96.54(a), Outgoing Cases—Removes the provisions on birth parent-selected PAPs. ASPs make reasonable efforts to find a timely U.S. adoptive placement.	Not possible to de- termine.	Not possible to de- termine.	Not possible to de- termine.
14. Preamble II–F–2, § 96.54(d)(2), Diligent Efforts to place siblings together ....	731 .....	65,745 .....	80,355.
15. Preamble II–G–1, § 96.32(c), Retain board meeting records and records about supervised providers, financial transactions with foreign countries for 25 years.	610 .....	54,900 .....	67,100.
16. Preamble II–G–2, § 96.32(e)(4), ASP discloses to the AE orgs that share with it any leadership, officers, boards or family relationships and whether it provides services to or receives payment from the agency or person.	610 .....	54,900 .....	67,100.
17. Preamble II–I–1, § 96.25(c), Deliberate destruction of documentation or pro- vision of false or misleading information.	62 .....	5,580 .....	6,820.
18. Preamble II–I–2, § 96.37(c), Training topics for social service personnel may be waived due to training or experience.	Not possible to de- termine.	Not possible to de- termine.	Not possible to de- termine.
19. Preamble II–I–3, § 96.38(b), Topics relating to intercountry adoption about which agency social service personnel require training.	610 .....	54,900 .....	67,100.
20. Preamble II–I–4, § 96.38(d), Exemption from training for newly hired social service staff in certain circumstances.	93 .....	8,370 .....	10,230.
21. Preamble II–I–5, § 96.47(e), Procedures for withdrawal of home study ap- proval.	610 .....	54,900 .....	67,100.
<b>Average Additional Costs in Subsequent Years</b>			
4. Preamble II–C–3 Subsequent Years Average Costs .....	\$2,772 .....	\$249,480 .....	\$304,920.
6. Preamble II–C–5 Subsequent Year Average Costs .....	\$2,601 .....	\$185,445 .....	\$226,655.
9. Preamble II–C–8 Subsequent Year Average Costs .....	\$441 .....	\$39,690 .....	\$48,510.
Total Average Costs for Subsequent Years .....	\$5,274 .....	\$474,615 .....	\$580,085.

TABLE 3—REVENUE TEST FOR ACCREDITED OR APPROVED ADOPTION SERVICE PROVIDERS (NAICS CODE 624110)—\$11 MILLION SMALL FIRM SIZE STANDARD—COST OF IMPLEMENTATION AS A PERCENTAGE OF GROSS ANNUAL RECEIPTS

Firm Size (by gross receipts)	Average annual \$ receipts	Number of firms	% of small firms	Average \$ cost per firm in first year	Revenue test (%)	Average \$ cost per firm in subsequent years	Revenue test (%)
Firms with Receipts from \$100M up to \$500M .....	150,638,293	3	N/A	14,103	<1	5,274	<1
Firms with Receipts from \$11M up to \$100M .....	21,613,364	17	N/A	14,103	<1	5,274	<1
Small Firms:							
Gross Receipts up to \$11M .....	2,047,594	90	100	14,103	<1	5,274	<1
Firms with Receipts from \$5M up to \$11M .....	6,973,159	12	12	14,103	<1	5,274	<1
Firms with Receipts from \$2M up to \$5M .....	3,420,233	17	18	14,103	<1	5,274	<1
Firms with Receipts from \$1M up to \$2M .....	1,409,580	16	20	14,103	1	5,274	<1
Firms with Receipts from \$500K up to \$1M .....	695,517	19	23	14,103	2	5,274	<1
Firms with Receipts from \$500K and under .....	257,443	26	27	14,103	5	5,274	2

Number of ASP Firms for whom we had no financial data: 8.

*What the cost data and the revenue test tell us:* Represented in Tables 2 and 3 are the average costs of implementing the changes proposed in this NPRM, at least as far as we could anticipate such costs. The data are shown both as aggregated average costs and as separately reported average costs for each proposed change. The data are reported in three columns, the projected average costs to a single small firm in Year 1, the projected average cost for all small firms taken together in Year 1, and in the third column, the projected average cost for all ASP firms combined, regardless of size. This third column allows us to draw some conclusions about all ASPs separate from our interest in the impact of the proposed changes on small firms. See the discussion of these data in the narrative to E.O. 12866.

The revenue tests reported in Table 3 illustrate that for most of the small firms, the anticipated average cost is either about 2 percent or less than 1 percent of gross revenues. The one exception is the group of small firms with the smallest amount of gross annual revenues, those bringing in less than \$500,000 annually. For this group, the test revealed as much as 5% of revenues would be needed to implement the proposed changes considered in this NPRM. Five percent is a “high” result for the test if taken at face value. We chose to employ average implementation costs rather than ranges, because the higher end of any range suggests that a given firm had as much chance of being at the upper extreme as at the lower one. In fact, the well-known statistical notion of regression toward the mean suggests that in most situations, individuals and

entities tend to fall away from statistical extremes toward the average or mean. In this case, we do not mean to predict that in every case ASPs will end up implementing these changes right in the middle of a possible range of costs. Rather, we believe that how ASPs implement these changes will be likely to mirror how they do the rest of their work—smaller entities would do their best using available staff skills and resources and within existing budget constraints. Large entities would be more likely to acquire additional talent or expertise to take on the implementation tasks.

For example, because we do not prescribe how firms are to segregate client funds from ASP operating funds or funds dedicated to other families, ASPs will choose the most cost-effective solution for themselves. In our cost projections we projected acquiring talented staff with special expertise to plan, implement and monitor a system of segregation of funds. We would, however, anticipate that for firms operating at or close to their budget margins, the solution chosen would be the most cost effective one that meets their requirements. It would be realistic to predict that for the 29% of small firms falling in this lowest revenue group, the ASPs would be likely to implement the standard at or near minimum cost, such as use of a paper spreadsheet method to keep track of client funds, the management of which would be added to the existing duties of one or more staff members, rather than hiring new staff or a service to virtually or actually segregate the funds and be able to verify with great speed how successful implementation was. In this example the very least expensive

solution for Item number 9 (Holding Unspent Client Funds Separate from ASP Operating Funds) on the summary of costs table would likely fall well short (closer to zero dollars annually) of the average projected cost of \$1,880/year. Viewed with this set of lenses, the anticipated cost to the agency of at least this one element would skew the overall cost of implementation away from the mean entirely toward something approaching less than 3%, well within normal ranges.

#### *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 U.S.-based companies to compete with foreign-based companies in domestic and import markets.

#### *The Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (codified at 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 rule will not result in any such expenditure, nor will it significantly or

uniquely affect small governments or the private sector.

*Executive Orders 12372 and 13132: Federalism*

While States traditionally have regulated adoptions and will have an interest in this rule, the Department does not believe that this regulation will 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. The rule will not impose any obligations on State governments or 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. The obligation to determine whether the benefits of the proposed revision to the accreditation regulation outweigh the costs of achieving them is made more difficult by the fact that the benefits, which primarily relate to protecting the best interests of the child as well as providing certain consumer protections for PAPs, are difficult to economically quantify. There is a severe lack of quantitative data analysis relating to the work performed by social service professionals in the intercountry adoption setting. That makes a strict cost-benefit analysis more difficult to accomplish.

Similarly, there is little quantitative data analysis of the significant qualitative benefits for children, their birth parents and their adoptive families. We found none that shed light on the work of intercountry adoption professionals and have been obliged to rely on a qualitative analysis, instead. We do not know, for example, how many relative adoptions occur annually, since those cases are now processed exactly as every other intercountry adoption and neither the Department nor DHS track this specific information. In addition, because the Department's regulatory authority generally does not extend to after the intercountry adoption is completed, our visibility into the long-term outcomes for families and child is limited to anecdotal reports, academic literature, and to the data submitted under the requirements of our Annual Report to the Congress.

Nonetheless, we believe the benefits apparent from this *qualitative* discussion of costs and benefits supports our conclusion that the costs associated with the proposed changes

are justified and conclude that they deliver significant benefits on several levels. The benefits to children, to adoptive families, to society in general, and to the institution of intercountry adoption in terms of its world-wide viability outweigh the dollar costs of implementing the proposed changes.

The changes the Department is proposing regarding relative adoptions are designed to improve the efficiency of the adoption process in such cases and reduce unintended barriers to relative adoption. We believe that these proposed changes will help ensure that relative adoptions are completed in a manner that promotes the best interests of children and protects the rights of and prevent abuses against children, birth families, and adoptive parents, while also recognizing the uniqueness of these adoptions. The benefits to children we anticipate resulting from the incremental changes proposed here are tied to the improved chances for placement of children in families through intercountry adoption, including promoting. We believe the additional protections proposed in this rulemaking will help ensure that PAPs are more informed and have additional protections during the adoption process. The more likely that children are to be placed in families thorough a safe and transparent process, the more likely they are to experience personal safety, have a chance at lifelong permanency and security in a family, and benefit from all the physical, emotional, and intellectual ills avoided when children are removed from institutional care.

The changes proposed here seek to iron out some of the wrinkles in the fabric of intercountry adoption that create irritation and, sometimes, insuperable barriers to its effectiveness. Among these sources of irritation are the perception that U.S. adoption fees are very high; our proposed changes allow ASPs to provide much more granularity about the fees they charge both in the United States and abroad. This may increase information utility and reduce information asymmetry for PAPs when selecting an ASP. Additionally, providing additional transparency on what fees are charged and building in accountability that fees are actually expended as intended serves to bolster foreign countries' trust in the United States as good partners in intercountry adoption. While this is primarily a qualitative benefit pertaining to improved foreign relations, bolstered trust improves could result, in the long-term, in encouraging countries to reduce their in-country adoption fees, which would benefit families and the

reputation of intercountry adoption as well.

Increasing reporting requirements and timeliness of those reports about adoption disruptions helps to engage countries of origin early on in finding solutions to failing adoptions. This strengthens trust and cooperation in this fundamentally international process. We believe this will also help improve protections for adoptive children in the unlikely event of disruption or dissolution.

Holding client funds in separate accounts or under strict separation of accounting helps protect families in the event that an ASP is unable to complete its adoption case. When properly sequestered, such unused PAP funds can be returned to the PAPs or transferred to the new agency taking over from the withdrawing one so that the intercountry adoption case can continue in a seamless manner. Often in the past, the lack of holding unused funds separate from other ASP operating funds has meant that when the ASP must withdraw from the case, the intercountry adoption case languishes and never reaches completion because PAPs are asked to provide thousands of additional dollars to the case when it is discovered that the ASP has spent their money on other PAPs cases or on general agency expenses. While there may be minor accounting or administrative costs associated with this process, we believe these are outweighed by the reductions in moral hazards and financial protections for PAPs caused by ensuring those funds are secured for their intended purpose.

In our view the wide range of non-quantifiable benefits resulting from the proposed changes in this NPRM, though not definable in monetary terms, nevertheless do justify the costs of this NPRM.

*Total Cost Estimates*

Table 4 summarizes the impacts of the proposed rule. Total monetized costs of the proposed rule include the aggregated average cost of implementing the proposed changes to the accreditation rule found in Appendix A and summarized in Table 2. The 10-year discounted cost of the proposed rule in 2020 dollars would range from x thousands to y thousands (with 7 and 3 percent discount rates, respectively). The annualized costs of the proposed rule would range from \$534,000 to \$607,000 (with 7 and 3 percent discount rates, respectively).

TABLE 4—COSTS OF THE PROPOSED RULE  
[2020 \$ thousands]

Fiscal year	All ASP firms regardless of size
2021 .....	1,558
2022 .....	580
2023 .....	580
2024 .....	580
2025 .....	580
2026 .....	580
2027 .....	580
2028 .....	580
2029 .....	580
2030 .....	580
Undiscounted Total .....	\$6,778
Total with 3% discounting .....	\$6,074
Total with 7% discounting .....	\$5,337
Annualized, 3% discount rate, 10 years .....	\$607
Annualized, 7% discount rate, 10 years .....	\$534

*Executive Order 12988: Civil Justice Reform*

The Department has reviewed these regulations in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation risks, establish clear legal standards, and reduce burden. The Department has made every reasonable effort to ensure compliance with the requirements in Executive Order 12988.

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

The Department has determined that this rulemaking 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.

*The Paperwork Reduction Act of 1995*

In accordance with 42 U.S.C. 14953(c), this rule does not impose information collection requirements subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

**List of Subjects in 22 CFR Part 96**

Accreditation, Administrative practice and procedure, Intercountry adoption, Reporting and recordkeeping requirements, Standards, Treaties

For the reasons stated in the preamble, the State Department proposes to amend 22 CFR part 96 as follows:

**PART 96—INTERCOUNTRY ADOPTION ACCREDITATION OF AGENCIES AND APPROVAL OF PERSONS**

■ 1. The authority citation for part 96 continues to read as follows:

**Authority:** The 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)); The Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954; The Intercountry Adoption Universal Accreditation Act of 2012, Pub. L. 112–276, 42 U.S.C. 14925.

■ 2. Revise subpart A to read as follows:

**Subpart A—General Provisions**

Sec.  
96.1 Purpose.  
96.2 Definitions.  
96.3 [Reserved]

**Subpart A—General Provisions****§ 96.1 Purpose.**

This part provides for the accreditation and approval of agencies and persons pursuant to the Intercountry Adoption Act of 2000 (42 U.S.C. 14901–14954, Pub. L. 106–279), which implements the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, U.S. Senate Treaty Doc. 105–51, Multilateral Treaties in Force as of January 1, 2016, p. 9; and the Intercountry Adoption Universal Accreditation Act of 2012 (42 U.S.C. 14925, Pub. L. 112–276).

**§ 96.2 Definitions.**

As used in this part, the term:

*Accredited agency* means an agency that has been accredited by an accrediting entity, in accordance with the standards in subpart F of this part, to provide adoption services in the United States in intercountry adoption cases.

*Accrediting entity* means an entity that has been designated by the Secretary to accredit agencies and/or to approve persons for purposes of providing adoption services in the United States in intercountry adoption cases.

*Adoption* means the judicial or administrative act that establishes a permanent legal parent-child relationship between a minor and an adult who is not already the minor's legal parent and terminates the legal parent-child relationship between the adoptive child and any former parent(s).

*Adoption record* means any record, information, or item related to a specific intercountry adoption of a child received or maintained by an agency, person, or public domestic authority, including, but not limited to, photographs, videos, correspondence, personal effects, medical and social information, and any other information about the child.

*Adoption service* means any one of the following six services:

(1) Identifying a child for adoption and arranging an adoption;

(2) Securing the necessary consent to termination of parental rights and to adoption;

(3) Performing a background study on a child or a home study on a prospective adoptive parent(s), and reporting on such a study;

(4) Making non-judicial determinations of the best interests of a child and the appropriateness of an adoptive placement for the child;

(5) Monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption; or

(6) When necessary because of a disruption before final adoption, assuming custody and providing (including facilitating the provision of) child care or any other social service pending an alternative placement.

*Agency* means a private, nonprofit organization licensed to provide adoption services in at least one State. (For-profit entities and individuals that provide adoption services are considered “persons” as defined in this section.)

*Approved home study* means a review of the home environment of the child’s prospective adoptive parent(s) that has been:

(1) Completed by an accredited agency; or

(2) Approved by an accredited agency.

*Approved person* means a person that has been approved, in accordance with the standards in subpart F of this part, by an accrediting entity to provide adoption services in the United States in intercountry adoption cases.

*Authorization* means the permission from a Central Authority for an agency or person to act in a country with respect to an intercountry adoption. In the United States, accreditation or approval provides general authorization to act with respect to an intercountry adoption. Where required, an accredited agency or approved person must also have the authorization of the relevant country to act in that country.

*Best interests of the child*, in cases in which a State has jurisdiction to decide whether a particular adoption or adoption-related action is in a child’s best interests, shall have the meaning given to it by the law of that State. In all other cases, including any case in which a child is outside the United States at the time the ASP considers, or should have considered, the best interests of the child in connection with any decision or action, best interests of the child shall be interpreted in light of the object and purpose of the Convention, without reference to the law of any particular State.

*Case Registry* means the tracking system jointly established by the Secretary and DHS to comply with section 102(e) of the IAA (42 U.S.C. 14912).

*Central Authority* means the entity designated as such under Article 6(1) of the Convention by any Convention country, or, in the case of the United

States, the United States Department of State. In countries that are not Convention countries, Central Authority means the relevant “competent authority” as defined in this section.

*Central Authority function* means any duty required to be carried out by a Central Authority in a Convention country, and any equivalent function in a non-Convention country.

*Child welfare services* means services, other than those defined as “adoption services” in this section, that are designed to promote and protect the well-being of a family or child. Such services include, but are not limited to, providing temporary foster care for a child in connection with an intercountry adoption or providing educational, social, cultural, medical, psychological assessment, mental health, or other health-related services for a child or family in an intercountry adoption case.

*Client* means the prospective adoptive parent(s) with whom an accredited agency or approved person enters into a service agreement pursuant to § 96.44.

*Competent authority* means a court or governmental authority of a foreign country that has jurisdiction and authority to make decisions in matters of child welfare, including adoption.

*Complaint* means any written or electronic communication made to the accredited agency or approved person, the accrediting entity, or the Department, or submitted to the complaint registry, about an accredited agency or approved person, including its officers, directors, employees, and independent contractors, or its activities or services, including its use of supervised providers, that may raise an issue of non-compliance with the Convention, the IAA, the UAA, or the regulations implementing the IAA and the UAA.

*Complaint Registry* means the system created by the Secretary pursuant to § 96.70 to receive, distribute, and monitor complaints relevant to the accreditation or approval status of agencies and persons.

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

*Convention adoption* means the adoption of a child resident in a Convention country by a United States citizen, or an adoption of a child resident in the United States by an individual or individuals residing in a Convention country, when, in connection with the adoption, the child has moved or will move between the United States and the Convention country.

*Convention country* means a country that is a party to the Convention and with which the Convention is in force for the United States.

*Country of origin* means the country in which a child is a resident and from which a child is emigrating in connection with his or her adoption.

*Debarment* means the loss of accreditation or approval by an agency or person as a result of an order of the Secretary under which the agency or person is temporarily or permanently barred from accreditation or approval.

*DHS* means the U.S. Department of Homeland Security and encompasses the former Immigration and Naturalization Service (INS) or any successor entity designated by the Secretary of Homeland Security to assume the functions vested in the Attorney General by the IAA relating to the INS’s responsibilities.

*Disruption* means the interruption of a placement for adoption during the post-placement period.

*Dissolution* means the termination of the adoptive parent(s)’ parental rights after an adoption.

*Exempted provider* means a social work professional or organization that performs a home study on prospective adoptive parent(s) or a child background study (or both) in the United States in connection with an intercountry adoption (including any reports or updates), but that is not currently providing and has not previously provided any other adoption service in the case.

*IAA* means the Intercountry Adoption Act of 2000, Public Law 106–279 (2000) (42 U.S.C. 14901–14954), as amended from time to time.

*INA* means the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*), as amended.

*Intercountry adoption* means a Convention adoption as described in INA section 101(b)(1)(G) or the adoption of a child described in INA section 101(b)(1)(F).

*Legal custody* means having legal responsibility for a child under the order of a court of law, a public domestic authority, competent authority, public foreign authority, or by operation of law.

*Legal services* means services, other than those defined in this section as “adoption services,” that relate to the provision of legal advice and information and to the drafting of legal instruments. Such services include, but are not limited to, drawing up contracts, powers of attorney, and other legal instruments; providing advice and counsel to adoptive parent(s) on completing DHS or Central Authority

forms; and providing advice and counsel to accredited agencies, approved persons, or prospective adoptive parent(s) on how to comply with the Convention, the IAA, the UAA, and the regulations implementing the IAA and the UAA.

*Person* means an individual or a private, for-profit entity (including a corporation, company, association, firm, partnership, society, or joint stock company) providing adoption services. It does not include public domestic authorities or public foreign authorities.

*Post-adoption* means after an adoption; in cases in which an adoption occurs in a foreign country and is followed by a re-adoption in the United States, it means after the adoption in the foreign country.

*Post-placement* means after a grant of legal custody or guardianship of the child to the prospective adoptive parent(s), or to a custodian for the purpose of escorting the child to the identified prospective adoptive parent(s), and before an adoption.

*Primary provider* means the accredited agency or approved person that is identified pursuant to § 96.14 as responsible for ensuring that all six adoption services are provided and for supervising and being responsible for supervised providers where used.

*Public domestic authority* means an authority operated by a State, local, or tribal government within the United States, or an agent of such government.

*Public foreign authority* means a court or regulatory authority operated by a national or subnational government of a foreign country.

*Relative*, for the purposes of the alternative procedures for the intercountry adoption of relatives found in subpart R of this part, means any of the following: parent, step-parent, brother, step-brother, sister, step-sister, grandparent, aunt, uncle, half-brother to the child's parent, half-sister to the child's parent, half-brother, half-sister, or the U.S. citizen spouse of the person with one of these qualifying relationships with the child. The relationship can exist by virtue of blood, marriage, or adoption.

*Secretary* means the Secretary of State, the Assistant Secretary of State for Consular Affairs, or any other Department of State official exercising the Secretary of State's authority under the Convention, the IAA, the UAA, or any regulations implementing the IAA and the UAA, pursuant to a delegation of authority.

*State* means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the

Northern Mariana Islands, Guam, and the U.S. Virgin Islands.

*Supervised provider* means any agency, person, or other non-governmental entity, including any foreign person or entity, regardless of whether it is called a facilitator, agent, attorney, or by any other name, that is providing one or more adoption services in an intercountry adoption case under the supervision and responsibility of an accredited agency or approved person that is acting as the primary provider in the case.

*UAA* means the Intercountry Adoption Universal Accreditation Act of 2012 (42 U.S.C. 14925, Pub. L. 112–276 (2012)).

*Unregulated custody transfer* is the placement of a child with a person or entity with the intent of severing the child's existing parent-child or guardian-child relationship without taking the appropriate steps both to ensure the child's safety and permanency and to transfer legal custody or guardianship of the child.

*USCIS* means U.S. Citizenship and Immigration Services within the U.S. Department of Homeland Security.

### § 96.3 [Reserved]

#### ■ 3. Revise subpart B to read as follows:

#### **Subpart B—Selection, Designation, and Duties of Accrediting Entities**

Sec.

96.4 Designation of accrediting entities by the Secretary.

96.5 Requirement that accrediting entity be a nonprofit or public entity.

96.6 Performance criteria for designation as an accrediting entity.

96.7 Authorities and responsibilities of an accrediting entity.

96.8 Fees charged by accrediting entities.

96.9 Agreement between the Secretary and the accrediting entity.

96.10 Suspension or cancellation of the designation of an accrediting entity by the Secretary.

96.11 [Reserved]

#### **Subpart B—Selection, Designation, and Duties of Accrediting Entities**

#### **§ 96.4 Designation of accrediting entities by the Secretary.**

(a) The Secretary, in the Secretary's discretion, will designate one or more entities that meet the criteria set forth in § 96.5 to perform the accreditation and/or approval functions. Each accrediting entity's designation will be set forth in an agreement between the Secretary and the accrediting entity. The agreement will govern the accrediting entity's operations. The agreements will be published in the **Federal Register**.

(b) The Secretary's designation may authorize an accrediting entity to

accredit agencies, to approve persons, or to both accredit agencies and approve persons. The designation may also limit the accrediting entity's geographic jurisdiction or impose other limits on the entity's jurisdiction.

(c) A public entity under § 96.5(b) may only be designated to accredit agencies and approve persons that are located in the public entity's State.

#### **§ 96.5 Requirement that accrediting entity be a nonprofit or public entity.**

An accrediting entity must qualify as either:

(a) An organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended (26 CFR 1.501(c)(3)–1), that has expertise in developing and administering standards for entities providing child welfare services; or

(b) A public entity (other than a Federal entity), including, but not limited to, any State or local government or governmental unit or any political subdivision, agency, or instrumentality thereof, that has expertise in developing and administering standards for entities providing child welfare services.

#### **§ 96.6 Performance criteria for designation as an accrediting entity.**

An entity that seeks to be designated as an accrediting entity must demonstrate to the Secretary:

(a) That it has a governing structure, the human and financial resources, and systems of control adequate to ensure its reliability;

(b) That it is capable of performing the accreditation or approval functions or both on a timely basis and of administering any renewal cycle authorized under § 96.60;

(c) That it can monitor the performance of accredited agencies and approved persons (including their use of any supervised providers) to ensure their continued compliance with the Convention, the IAA, the UAA, and the regulations implementing the IAA and the UAA;

(d) That it has the capacity to take appropriate adverse actions against accredited agencies and approved persons;

(e) That it can perform the required data collection, reporting, and other similar functions;

(f) Except in the case of a public entity, that it operates independently of any accredited agency or approved person that provides adoption services, and of any membership organization that includes agencies or approved persons that provide adoption services;



(g) That it has the capacity to conduct its accreditation and approval functions fairly and impartially;

(h) That it can comply with any conflict of interest prohibitions set by the Secretary;

(i) That it prohibits conflicts of interest with accredited agencies or approved persons or with any membership organization that includes accredited agencies or persons that provide adoption services; and

(j) That it prohibits its employees or other individuals acting as site evaluators, including, but not limited to, volunteer site evaluators, from becoming employees or supervised providers of an accredited agency or approved person for at least one year after they have evaluated such agency or person for accreditation or approval.

**§ 96.7 Authorities and responsibilities of an accrediting entity.**

(a) An accrediting entity may be authorized by the Secretary to perform some or all of the following functions:

(1) Determining whether agencies are eligible for accreditation;

(2) Determining whether persons are eligible for approval;

(3) Overseeing accredited agencies and/or approved persons by monitoring their compliance with applicable requirements;

(4) Reviewing and responding to complaints about accredited agencies and approved persons (including their use of supervised providers);

(5) Taking adverse action against an accredited agency or approved person, and/or referring an accredited agency or approved person for possible action by the Secretary;

(6) Determining whether accredited agencies and approved persons are eligible for renewal of their accreditation or approval on a cycle consistent with § 96.60;

(7) Collecting data from accredited agencies and approved persons, maintaining records, and reporting information to the Secretary, State courts, and other entities; and

(8) Assisting the Secretary in taking appropriate action to help an agency or person in transferring its intercountry adoption cases and adoption records.

(9) Maintaining all records related to its role as an accrediting entity for a period of at least ten years, or as otherwise set forth in its agreement with the Secretary.

(b) The Secretary may require the accrediting entity:

(1) To utilize the Complaint Registry as provided in subpart J of this part; and

(2) To fund a portion of the costs of operating the Complaint Registry with

fees collected by the accrediting entity pursuant to the schedule of fees approved by the Secretary as provided in § 96.8.

(c) An accrediting entity must perform all responsibilities in accordance with the Convention, the IAA, the UAA, the regulations implementing the IAA and the UAA, and its agreement with the Secretary.

**§ 96.8 Fees charged by accrediting entities.**

(a) An accrediting entity may charge fees for accreditation or approval services under this part only in accordance with a schedule of fees approved by the Secretary. Before approving a schedule of fees proposed by an accrediting entity, or subsequent proposed changes to an approved schedule, the Secretary will require the accrediting entity to demonstrate:

(1) That its proposed schedule of fees reflects appropriate consideration of the relative size and geographic location and volume of intercountry adoption cases of the agencies or persons it expects to serve; and

(2) That the total fees the accrediting entity expects to collect under the schedule of fees will not exceed the full costs of the accrediting entity functions the Secretary has authorized it to perform under this part (including, but not limited to, costs for completing the accreditation or approval process, complaint review, routine oversight and enforcement, and other data collection and reporting activities).

(b) The Secretary shall publish in the **Federal Register** a notice of the proposed fee schedule along with a summary of the information provided by the AE and a general statement explaining their basis. After notice required by this section, the Secretary shall give interested persons an opportunity to participate in the proposed fee schedule setting through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the Secretary shall, following approval of the final schedule of fees, publish the final schedule of fees and a concise general statement of their basis.

(c) The schedule of fees must:

(1) Establish separate, non-refundable fees for accreditation and approval; and

(2) Include in each fee the costs of all activities associated with such fee, including but not limited to, costs for completing the accreditation or approval process, complaint review, routine oversight and enforcement, and other data collection and reporting activities, except that separate fees

based on actual costs incurred may be charged for the travel and maintenance of evaluators.

(d) An accrediting entity must make its approved schedule of fees available to the public, including prospective applicants for accreditation or approval, upon request. At the time of application, the accrediting entity must specify the fees to be charged to the applicant 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 accredited or approved.

(e) Nothing in this section shall be construed to provide a private right of action to challenge any fee charged by an accrediting entity pursuant to a schedule of fees approved by the Secretary.

**§ 96.9 Agreement between the Secretary and the accrediting entity.**

An accrediting entity must perform its functions pursuant to a written agreement with the Secretary that will be published in the **Federal Register**. The agreement will address:

(a) The responsibilities and duties of the accrediting entity;

(b) The method by which the costs of delivering the authorized accrediting entity functions may be recovered through the collection of fees from those seeking accreditation or approval, and how the entity's schedule of fees will be approved;

(c) How the accrediting entity will address complaints about accredited agencies and approved persons (including their use of supervised providers) and complaints about the accrediting entity itself;

(d) Data collection requirements;

(e) Matters of communication and accountability between both the accrediting entity and the applicant(s) and between the accrediting entity and the Secretary; and

(f) Other matters upon which the parties have agreed.

**§ 96.10 Suspension or cancellation of the designation of an accrediting entity by the Secretary.**

(a) The Secretary will suspend or cancel the designation of an accrediting entity if the Secretary concludes that it is substantially out of compliance with the Convention, the IAA, the UAA, the regulations implementing the IAA and the UAA, other applicable laws, or the agreement with the Secretary. Complaints regarding the performance of the accrediting entity may be submitted to the Department of State, Bureau of Consular Affairs. The Secretary will consider complaints in

determining whether an accrediting entity's designation should be suspended or canceled.

(b) The Secretary will notify an accrediting entity in writing of any deficiencies in the accrediting entity's performance that could lead to the suspension or cancellation of its designation, and will provide the accrediting entity with an opportunity to demonstrate that suspension or cancellation is unwarranted, in accordance with procedures established in the agreement entered into pursuant to § 96.9.

(c) An accrediting entity may be considered substantially out of compliance under circumstances that include, but are not limited to:

(1) Failing to act in a timely manner when presented with evidence that an accredited agency or approved person is substantially out of compliance with the standards in subpart F of this part;

(2) Accrediting or approving an agency or person whose performance results in intervention of the Secretary for the purpose of suspension, cancellation, or debarment;

(3) Failing to perform its responsibilities fairly and objectively;

(4) Violating prohibitions on conflicts of interest;

(5) Failing to meet its reporting requirements;

(6) Failing to protect information, including personally identifiable information, or documents that it receives in the course of performing its responsibilities; and

(7) Failing to monitor frequently and carefully the compliance of accredited agencies and approved persons with the Convention, the IAA, the UAA, and the regulations implementing the IAA and the UAA, including the home study requirements of the Convention, section 203(b)(1)(A)(ii) of the IAA (42 U.S.C. 14923(b)(1)(A)(ii)), and § 96.47.

(d) An accrediting entity that is subject to a final action of suspension or cancellation 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 accrediting entity is located to set aside the action as provided in section 204(d) of the IAA (42 U.S.C. 14924(d)).

#### § 96.11 [Reserved]

■ 4. Transfer § 96.12 from subpart C to subpart B and revise it to read as follows:

#### § 96.12 Authorized adoption service providers.

(a) Except as provided in section 505(b) of the IAA (relating to transition cases) and section 2(c) of the UAA

(relating to transition cases), an agency or person may not offer, provide, or facilitate the provision of any adoption service in connection with an intercountry adoption unless it is:

(1) An accredited agency or an approved person;

(2) A supervised provider; or

(3) An exempted provider, if the exempted provider's home study or child background study will be reviewed and approved by an accredited agency pursuant to § 96.47(c) or § 96.53(b).

(b) A public domestic authority may also offer, provide, or facilitate the provision of any such adoption service.

(c) Neither conferral nor maintenance of accreditation or approval, nor status as an exempted or supervised provider, nor status as a public domestic authority shall be construed to imply, warrant, or establish that, in any specific case, an adoption service has been provided consistently with the Convention, the IAA, the UAA, or the regulations implementing the IAA and the UAA. Conferral and maintenance of accreditation or approval under this part establishes only that the accrediting entity has concluded, in accordance with the standards and procedures of this part, that the accredited agency or approved person provides adoption services in substantial compliance with the applicable standards set forth in this part; it is not a guarantee that in any specific case the accredited agency or approved person is providing adoption services consistently with the Convention, the IAA, the UAA, the regulations implementing the IAA and the UAA, or any other applicable law, whether Federal, State, or foreign. Neither the Secretary nor any accrediting entity shall be responsible for any acts of an accredited agency, approved person, exempted provider, supervised provider, or other entity providing services in connection with an intercountry adoption.

■ 5. Revise subpart E to read as follows:

#### Subpart E—Evaluation of Applicants for Accreditation and Approval

Sec.

96.23 Scope.

96.24 Procedures for evaluating applicants for accreditation or approval.

96.25 Access to information and documents requested by the accrediting entity.

96.26 Protection of information and documents by the accrediting entity.

96.27 Substantive criteria for evaluating applicants for accreditation or approval.

#### Subpart E—Evaluation of Applicants for Accreditation and Approval

##### § 96.23 Scope.

The provisions in this subpart govern the evaluation of agencies and persons for accreditation or approval.

##### § 96.24 Procedures for evaluating applicants for accreditation or approval.

(a) The accrediting entity must designate at least two evaluators to evaluate an agency or person for accreditation or approval. The accrediting entity's evaluators must have expertise in intercountry adoption, standards evaluation, finance or accounting, or have experience with the management or oversight of child welfare organizations and must also meet any additional qualifications required by the Secretary in the agreement with the accrediting entity.

(b) To evaluate the agency's or person's eligibility for accreditation or approval, the accrediting entity must:

(1) Review the agency's or person's written application and supporting documentation;

(2) Verify the information provided by the agency or person by examining underlying documentation;

(3) Consider any complaints received by the accrediting entity pursuant to subpart J of this part; and

(4) Conduct site visit(s).

(c) The site visit(s) may include, but need not be limited to, interviews with birth parents, adoptive parent(s), prospective adoptive parent(s), and adult adoptee(s) served by the agency or person, interviews with the agency's or person's employees, and interviews with other individuals knowledgeable about the agency's or person's provision of adoption services. It may also include a review of on-site documents. The accrediting entity must, to the extent practicable, advise the agency or person in advance of the type of documents it wishes to review during the site visit. The accrediting entity must require at least one of the evaluators to participate in each site visit. The accrediting entity must determine the number of evaluators that participate in a site visit in light of factors such as:

(1) The agency's or person's size;

(2) The number of adoption cases it handles;

(3) The number of sites the accrediting entity decides to visit; and

(4) The number of individuals working at each site.

(d) Before deciding whether to accredit an agency or approve a person, the accrediting entity may, in its discretion, advise the agency or person of any deficiencies that may hinder or

prevent its accreditation or approval and defer a decision to allow the agency or person to correct the deficiencies.

**§ 96.25 Access to information and documents requested by the accrediting entity.**

(a) The agency or person must give the accrediting entity access to information and documents, including adoption case files and proprietary information, that it requires or requests to evaluate an agency or person for accreditation or approval and to perform its oversight, enforcement, renewal, data collection, and other functions. The agency or person must also cooperate with the accrediting entity by making employees available for interviews upon request.

(b) Accrediting entity review of adoption case files pursuant to paragraph (a) of this section shall be limited to Convention adoption case files and cases subject to the UAA, except that, in the case of first-time applicants for accreditation or approval, the accrediting entity may review adoption case files related to other non-Convention cases for purposes of assessing the agency's or person's capacity to comply with record-keeping and data-management standards in subpart F of this part. The accrediting entity shall permit the agency or person to redact names and other information that identifies birth parent(s), prospective adoptive parent(s), and adoptee(s) from such non-Convention adoption case files not subject to the UAA prior to their inspection by the accrediting entity.

(c) If an agency or person fails to provide requested documents or information, or to make employees available as requested, or engages in deliberate destruction of documentation, or provides false or misleading documents or information, the accrediting entity may deny accreditation or approval or, in the case of an accredited agency or approved person, take appropriate adverse action against the agency or person solely on that basis.

**§ 96.26 Protection of information and documents by the accrediting entity.**

(a) The accrediting entity must protect from unauthorized use and disclosure all documents and information about the agency or person it receives including, but not limited to, documents and proprietary information about the agency's or person's finances, management, and professional practices received in connection with the performance of its accreditation or approval, oversight, enforcement,

renewal, data collection, or other functions under its agreement with the Secretary and this part.

(b) The documents and information received may not be disclosed to the public and may be used only for the purpose of performing the accrediting entity's accreditation or approval functions, monitoring and oversight, and related tasks under its agreement with the Secretary and this part, or to provide information to the Secretary, the Complaint Registry, or an appropriate foreign, Federal, State, tribal, or local authority, including, but not limited to, a public domestic authority or local law enforcement authority unless:

(1) Otherwise authorized by the agency or person in writing;

(2) Otherwise required under Federal or State laws; or

(3) Required pursuant to subpart M of this part.

(c) Unless the names and other information that identifies the birth parent(s), prospective adoptive parent(s), and adoptee(s) are requested by the accrediting entity for an articulated reason, the agency or person may withhold from the accrediting entity such information and substitute individually assigned codes in the documents it provides. The accrediting entity must have appropriate safeguards to protect from unauthorized use and disclosure of any information in its files that identifies birth parent(s), prospective adoptive parent(s), and adoptee(s). The accrediting entity must ensure that its officers, employees, contractors, and evaluators who have access to information or documents provided by the agency or person have signed a non-disclosure agreement reflecting the requirements of paragraphs (a) and (b) of this section.

(d) The accrediting entity must maintain a complete and accurate record of all information it receives related to an agency or person, and the basis for the accrediting entity's decisions concerning the agency or person for a period of at least ten years, or as otherwise set forth in its agreement with the secretary.

**§ 96.27 Substantive criteria for evaluating applicants for accreditation or approval.**

(a) The accrediting entity may not grant an agency accreditation or a person approval, or permit an agency's or person's accreditation or approval to be maintained, unless the agency or person demonstrates to the satisfaction of the accrediting entity that it is in substantial compliance with the standards in subpart F of this part.

(b) When the agency or person makes its initial application for accreditation or approval, the accrediting entity may measure the capacity of the agency or person to achieve substantial compliance with the standards in subpart F of this part where relevant evidence of its actual performance is not yet available. Once the agency or person has been accredited or approved pursuant to this part, the accrediting entity must, for the purposes of monitoring, renewal, enforcement, and reapplication after adverse action, consider the agency's or person's actual performance in deciding whether the agency or person is in substantial compliance with the standards in subpart F of this part, unless the accrediting entity determines that it is still necessary to measure capacity because services have not yet been provided and thus adequate evidence of actual performance is not available.

(c) The standards contained in subpart F of this part apply during all the stages of accreditation and approval, including, but not limited to, when the accrediting entity is evaluating an applicant for accreditation or approval, when it is determining whether to renew an agency's or person's accreditation or approval, when it is monitoring the performance of an accredited agency or approved person, and when it is taking adverse action against an accredited agency or approved person. The accrediting entity shall use the standards contained in subpart F of this part, when determining whether an agency or person may be granted or permitted to maintain accreditation or approval.

(d) The Secretary will ensure that each accrediting entity performs its accreditation and approval functions using only a method approved by the Secretary that is substantially the same as the method approved for use by each other accrediting entity. Each such method will include: An assigned value for each standard (or element of a standard); a method of rating an agency's or person's compliance with each applicable standard; and a method of evaluating whether an agency's or person's overall compliance with all applicable standards establishes that the agency or person is in substantial compliance with the standards and can be accredited or approved. The Secretary will ensure that the value assigned to each standard reflects the relative importance of that standard to compliance with the Convention, the IAA, and the UAA and is consistent with the value assigned to the standard by other accrediting entities. The accrediting entity must advise

applicants of the value assigned to each standard (or elements of each standard) at the time it provides applicants with the application materials.

(e) If an agency or person previously has been denied accreditation or approval, has withdrawn its application in anticipation of denial, or is reapplying for accreditation or approval after cancellation, refusal to renew, or temporary debarment, the accrediting entity must take the reasons underlying such actions into account when evaluating the agency or person for accreditation or approval, and may deny accreditation or approval on the basis of the previous action.

(f) If an agency or person that has an ownership or control interest in the applicant, as that term is defined in section 1124 of the Social Security Act (42 U.S.C. 1320a-3), has been debarred pursuant to § 96.85, the accrediting entity must take into account the reasons underlying the debarment when evaluating the agency or person for accreditation or approval, and may deny accreditation or approval or refuse to renew accreditation or approval on the basis of the debarment.

(g) The standards contained in subpart F of this part do not eliminate the need for an agency or person to comply fully with the laws of the jurisdictions in which it operates. An agency or person must provide adoption services in intercountry adoption cases consistent with the laws of any State in which it operates, and with the Convention, the IAA, and the UAA. Persons that are approved to provide adoption services may only provide such services in States that do not prohibit persons from providing adoption services. Nothing in the application of subparts E and F of this part should be construed to require a State to allow persons to provide adoption services if State law does not permit them to do so.

■ 6. Revise subpart F to read as follows:

**Subpart F—Standards for Intercountry Adoption Accreditation and Approval**

Sec.

96.28 Scope.

96.29 Compliance with all applicable laws.

**Licensing and Corporate Governance**

96.30 State licensing.

96.31 Corporate structure.

96.32 Internal structure and oversight.

**Financial and Risk Management**

96.33 Budget, audit, insurance, and risk assessment requirements.

96.34 Compensation.

**Ethical Practices and Responsibilities**

96.35 Suitability of agencies and persons to provide adoption services.

96.36 Prohibition on child buying and inducement.

**Professional Qualifications and Training for Employees**

96.37 Education and experience requirements for social service personnel.

96.38 Training requirements for social service personnel.

**Information Disclosure, Fee Practices, and Quality Control Policies and Practices**

96.39 Information disclosure and quality control practices.

96.40 Fee policies and procedures.

**Responding to Complaints and Records and Reports Management**

96.41 Procedures for responding to complaints and improving service delivery.

96.42 Retention, preservation, and disclosure of adoption records.

96.43 Case tracking, data management, and reporting.

**Service Planning and Delivery**

96.44 Acting as primary provider.

96.45 Using supervised providers in the United States.

96.46 Using providers in foreign countries.

**Standards for Cases in Which a Child Is Immigrating to the United States (Incoming Cases)**

96.47 Preparation of home studies in incoming cases.

96.48 Preparation and training of prospective adoptive parent(s) in incoming cases.

96.49 Provision of medical and social information in incoming cases.

96.50 Placement and post-placement monitoring until final adoption in incoming cases.

96.51 Post-adoption services in incoming cases.

96.52 Performance of communication and coordination functions in incoming cases.

**Standards for Convention Cases in Which a Child Is Emigrating From the United States (Outgoing Cases)**

96.53 Background studies on the child and consents in outgoing Convention cases.

96.54 Placement standards in outgoing Convention cases.

96.55 Performance of Convention communication and coordination functions in outgoing Convention cases.

96.56 [Reserved]

**Subpart F—Standards for Intercountry Adoption Accreditation and Approval**

**§ 96.28 Scope.**

The provisions in this subpart provide the standards for accrediting agencies and approving persons.

**§ 96.29 Compliance with all applicable laws.**

(a) The agency or person has not:

(1) Provided any adoption service other than as:

(i) An accredited agency or an approved person;

(ii) A supervised provider, under the supervision of an accredited agency or approved person; or

(iii) An exempted provider, if the exempted provider's home study or child background study was prepared for review and approval by an accredited agency pursuant to § 96.47(c) or § 96.53(b).

(2) Provided any adoption service in a foreign country without authorization from the relevant foreign country, if required by that country.

(b) The agency or person gives the accrediting entity access to information, documents, and employees, as set forth in § 96.25, that the accrediting entity requires or requests to evaluate an agency or person for accreditation or approval and/or to perform its oversight, enforcement, renewal, data collection, and other functions. If an agency or person fails to provide requested documents or information, or to make employees available as requested, or engages in deliberate destruction of documentation, or provides false or misleading documents or information, the accrediting entity may deny accreditation or approval or, in the case of an accredited agency or approved person, take appropriate adverse action against the agency or person solely on that basis.

(c) In providing adoption services, the agency or person complies fully with the laws of each jurisdiction in which it operates and with the Convention, the IAA and the UAA. The agency or person does not provide adoption services in any State unless authorized to do so, where such authorization is required.

(d) In providing adoption services, the agency or person complies fully with the laws of each foreign country in which it operates. The agency or person does not provide adoption services in a foreign country unless authorized by the foreign country to do so, where such authorization is required.

**Licensing and Corporate Governance**

**§ 96.30 State licensing.**

(a) The agency or person is properly licensed or otherwise authorized by State law to provide adoption services in at least one State.

(b) The agency or person follows applicable State licensing and regulatory requirements in all jurisdictions in which it provides adoption services.

(c) If it provides adoption services in a State in which it is not itself licensed or authorized to provide such services, the agency or person does so only:

(1) Through agencies or persons that are licensed or authorized by State law to provide adoption services in that State and that are exempted providers or acting as supervised providers; or

(2) Through public domestic authorities.

(d) In the case of a person, the individual or for-profit entity is not prohibited by State law from providing adoption services in any State where it is providing adoption services, and does not provide adoption services in foreign countries that prohibit individuals or for-profit entities from providing adoption services.

#### **§ 96.31 Corporate structure.**

(a) The agency qualifies for nonprofit tax treatment under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or qualifies for nonprofit status under the laws of any State.

(b) The person is an individual or is a for-profit entity organized as a corporation, company, association, firm, partnership, society, or joint stock company, or other legal entity under the laws of any State.

#### **§ 96.32 Internal structure and oversight.**

(a) The agency or person has (or, in the case of an individual, is) a chief executive officer or equivalent official who is qualified by education, adoption service experience, and management credentials to ensure effective use of resources and coordinated delivery of the services provided by the agency or person, and has authority and responsibility for management and oversight of the staff and any supervised providers in carrying out the adoption-related functions of the organization.

(b) The agency or person has a board of directors or a similar governing body that establishes and approves its mission, policies, budget, and programs; provides leadership to secure the resources needed to support its programs; includes one or more individuals with experience in adoption, including but not limited to, adoptees, birth parents, prospective adoptive parent(s), and adoptive parents; and appoints and oversees the performance of its chief executive officer or equivalent official. This standard does not apply where the person is an individual practitioner.

(c) The agency or person keeps records of the meetings and deliberations of its governing body and of its major decisions affecting the delivery of adoption services for a period of not less than 25 years. The agency or person shall also maintain records relating to the selection, monitoring, and oversight of supervised

providers, financial transactions to and from foreign countries, and records pursuant to § 96.41 for a period of not less than 25 years.

(d) The agency or person has in place procedures and standards, pursuant to §§ 96.45 and 96.46, for the selection, monitoring, and oversight of supervised providers.

(e) The agency or person discloses to the accrediting entity the following information:

(1) Any other names by which the agency or person is or has been known, under either its current or any former form of organization, and the addresses and phone numbers used when such names were used;

(2) The name, address, and phone number of each current director, manager, and employee of the agency or person, and, for any such individual who previously served as a director, manager, or employee of another provider of adoption services, the name, address, and phone number of such other provider;

(3) The name, address, and phone number of any entity it uses or intends to use as a supervised provider; and

(4) The name, address, and phone number of all agencies or persons, non-profit organizations, or for-profit organizations that share with it any leadership, officers, board of directors, or family relationships, if such agency, person, or organization provides any service to, or receives any payment from, the agency or person.

#### **Financial and Risk Management**

##### **§ 96.33 Budget, audit, insurance, and risk assessment requirements.**

(a) The agency or person operates under a budget approved by its governing body, if applicable, for management of its funds. The budget discloses all remuneration (including perquisites) paid to the agency's or person's board of directors, managers, employees, and supervised providers.

(b) The agency's or person's finances are subject to annual internal review and oversight and are subject to independent audits every four years. The agency or person submits copies of internal financial review reports for inspection by the accrediting entity each year.

(c) The agency or person submits copies of each audit, as well as any accompanying management letter or qualified opinion letter, for inspection by the accrediting entity.

(d) The agency or person meets the financial reporting requirements of Federal and State laws and regulations.

(e) The agency's or person's balance sheets show that it operates on a sound

financial basis and maintains on average sufficient cash reserves, assets, or other liquid assets to meet its operating expenses for two months, taking into account its projected volume of cases and its size, scope, and financial commitments.

(f) The agency or person has a plan to transfer its intercountry adoption cases to an accredited agency or approved person if it ceases to provide or is no longer permitted to provide adoption services in intercountry adoption cases. The plan includes provisions for an organized transfer and reimbursement to clients of funds paid for services not yet rendered.

(g) If it accepts charitable donations, the agency or person has safeguards in place to ensure that such donations do not influence child placement decisions in any way.

(h) The agency or person assesses the risks it assumes, including by reviewing information on the availability of insurance coverage for intercountry adoption-related activities. The agency or person uses the assessment to meet the requirements in paragraph (i) of this section and as the basis for determining the type and amount of professional, general, directors' and officers', errors and omissions, and other liability insurance to carry.

(i) The agency or person maintains professional liability insurance in amounts reasonably related to its exposure to risk, but in no case in an amount less than \$1,000,000 in the aggregate.

(j) The agency's or person's chief executive officer, chief financial officer, and other officers or employees with direct responsibility for financial transactions or financial management of the agency or person are bonded.

##### **§ 96.34 Compensation.**

(a) The agency or person does not compensate or plan to compensate directly or indirectly, any individual or entity involved in an intercountry adoption with an incentive fee or contingent fee for each child located or placed for adoption.

(b) The agency or person compensates its directors, officers, employees, and supervised providers or any other agent, individual, or entity involved in an intercountry adoption only for services actually rendered and only on a fee-for-service, hourly wage, or salary basis rather than a contingent fee basis.

(c) The agency or person does not make any payments, promise payment, or give other consideration to any individual or entity directly or indirectly involved in provision of adoption services in a particular case,

except for salaries or fees for services actually rendered and reimbursement for costs incurred. This does not prohibit an agency or person from providing in-kind or other donations not intended to influence or affect a particular adoption.

(d) The fees, wages, or salaries paid to the directors, officers, employees, and supervised providers, or any other agent, individual, or entity involved in intercountry adoption on behalf of the agency or person, are not unreasonably high in relation to the services actually rendered, taking into account what such services actually cost in the country in which the services are provided; the location, number, and qualifications of staff; workload requirements; budget; and size of the agency or person.

(e) Any other compensation paid or provided to the agency's or person's directors or members of its governing body is not unreasonably high in relation to the services rendered, taking into account the same factors listed in paragraph (d) of this section and its for-profit or nonprofit status.

(f) The agency or person identifies all vendors to whom clients are referred for non-adoption services and discloses to the accrediting entity and the agency's or person's clients, any corporate or financial arrangements and any family relationships with such vendors.

### **Ethical Practices and Responsibilities**

#### **§ 96.35 Suitability of agencies and persons to provide adoption services.**

(a) The agency or person provides adoption services ethically and in accordance with the Convention's principles of:

(1) Ensuring that intercountry adoptions take place in the best interests of children; and

(2) Preventing the abduction, exploitation, sale, or trafficking of children.

(b) In order to permit the accrediting entity to evaluate the suitability of an agency or person for accreditation or approval, the agency or person discloses to the accrediting entity the following information related to the agency or person, under its current or any former name:

(1) Any instances in which the agency or person has lost the right to provide adoption services in any State or country, including the basis for such action(s);

(2) Any instances in which the agency or person was debarred or otherwise denied the authority to provide adoption services in any State or country, including the basis and disposition of such action(s);

(3) Any licensing suspensions for cause or other negative sanctions by oversight bodies against the agency or person, including the basis and disposition of such action(s);

(4) For the prior ten-year period, any disciplinary action(s) against the agency or person by a licensing or accrediting body, including the basis and disposition of such action(s);

(5) For the prior ten-year period, any written complaint(s) related to the provision of adoption related services, including the basis and disposition of such complaints, against the agency or person filed with any State or Federal or foreign regulatory body or court and of which the agency or person was notified;

(6) For the prior ten-year period, any known past or pending investigation(s) by Federal authorities, public domestic authorities, or by foreign authorities, criminal charge(s), child abuse charge(s), or lawsuit(s) against the agency or person, related to the provision of child welfare or adoption-related services, and the basis and disposition of such action(s);

(7) Any instances where the agency or person has been found guilty of any crime under Federal, State, or foreign law or has been found to have committed any civil or administrative violation involving financial irregularities under Federal, State, or foreign law;

(8) For the prior five-year period, any instances where the agency or person has filed for bankruptcy;

(9) Descriptions of any businesses or activities that may be inconsistent with the principles of the Convention and that have been or are currently carried out by the agency or person, affiliate organizations, or by any organization in which the agency or person has an ownership or controlling interest.

(c) In order to permit the accrediting entity to evaluate the suitability of an agency or person for accreditation or approval, the agency or person (for its current or any former names) discloses to the accrediting entity the following information about its individual directors, officers, and employees:

(1) For the prior ten-year period, any conduct by any such individual related to the provision of adoption-related services that was subject to external disciplinary proceeding(s);

(2) Any convictions, formal disciplinary actions or known, current investigations of any such individual for acts involving financial irregularities;

(3) The results of a State criminal background check and a child abuse clearance for any such individual in the United States in a senior management

position or who works directly with parent(s) and/or children (unless such checks have been included in the State licensing process); and

(4) Descriptions of any businesses or activities that may be inconsistent with the principles of the Convention and that are known to have been or are currently carried out by current individual directors, officers, or employees of the agency or person.

(d) In order to permit the accrediting entity to evaluate the suitability of a person who is an individual practitioner for approval, the individual:

(1) Provides the results of a State criminal background check and a child abuse clearance to the accrediting entity;

(2) If a lawyer, for every jurisdiction in which he or she has ever been admitted to the Bar, provides a certificate of good standing or an explanation of why he or she is not in good standing, accompanied by any relevant documentation, and immediately reports to the accrediting entity any disciplinary action considered by a State bar association, regardless of whether the action relates to intercountry adoption; and

(3) If a social worker, for every jurisdiction in which he or she has been licensed, provides a certificate of good standing or an explanation of why he or she is not in good standing, accompanied by any relevant documentation.

(e) In order to permit the accrediting entity to monitor the suitability of an agency or person, the agency or person must disclose any changes in the information required by this section within 30 business days of becoming aware of the change.

#### **§ 96.36 Prohibition on child buying and inducement.**

(a) The agency or person prohibits its employees and agents from giving money or other consideration, directly or indirectly, to a child's parent(s), other individual(s), or an entity as payment for the child or as an inducement to release the child.

(b) The agency or person has written policies and procedures in place reflecting the prohibitions in paragraph (a) of this section and reinforces them in its employee training programs. In order to monitor compliance, the agency's or person's policies and procedures require its employees, providers, and agents to retain a record of all payments or fees tendered in connection with an intercountry adoption and the purposes for which they were paid for as long as adoption records are kept in accordance

with § 96.42, and provide a copy thereof to the agency or person.

### Professional Qualifications and Training for Employees

#### § 96.37 Education and experience requirements for social service personnel.

(a) *Appropriate qualifications and credentials.* The agency or person only uses employees with appropriate qualifications and credentials to perform, in connection with an intercountry adoption, adoption-related social service functions that require the application of clinical skills and judgment (home studies, child background studies, counseling, parent preparation, post-placement, and other similar services).

(b) *State licensing, regulatory requirements.* The agency's or person's employees meet any State licensing or regulatory requirements for the services they are providing.

(c) *Application of clinical skills and judgment, training or experience.* The agency's or person's executive director, the supervisor overseeing a case, or the social service employee providing adoption-related social services that require the application of clinical skills and judgment (home studies, child background studies, counseling, parent preparation, post-placement, and other similar services) has training or experience in the professional delivery of intercountry adoption services.

(d) *Supervisors.* The agency's or person's social work supervisors have prior experience in family and children's services, adoption, or intercountry adoption and either:

- (1) A master's degree from an accredited program of social work;
- (2) A master's degree (or doctorate) in a related human service field, including, but not limited to, psychology, psychiatry, psychiatric nursing, counseling, rehabilitation counseling, or pastoral counseling; or
- (3) In the case of a social work supervisor who was an incumbent at the time the Convention entered into force for the United States, the supervisor had significant skills and experience in intercountry adoption and had regular access for consultation purposes to an individual with the qualifications listed in paragraphs (d)(1) or (d)(2) of this section.

(e) *Non-supervisory employees.* The agency's or person's non-supervisory employees providing adoption-related social services that require the application of clinical skills and judgment other than home studies or child background studies have either:

(1) A master's degree from an accredited program of social work or in another human service field; or

(2) A bachelor's degree from an accredited program of social work; or a combination of a bachelor's degree in any field and prior experience in family and children's services, adoption, or intercountry adoption; and

(3) Are supervised by an employee of the agency or person who meets the requirements for supervisors in paragraph (d) of this section.

(f) *Home studies.* The agency's or person's employees who conduct home studies:

(1) Are authorized or licensed to complete a home study under the laws of the States in which they practice;

(2) Meet the requirements for home study preparers in 8 CFR 204.301; and

(3) Are supervised by an employee of the agency or person who meets the requirements in paragraph (d) of this section.

(g) *Child background studies.* The agency's or person's employees who prepare child background studies:

(1) Are authorized or licensed to complete a child background study under the laws of the States in which they practice; and

(2) Are supervised by an employee of the agency or person who meets the requirements in paragraph (d) of this section.

#### § 96.38 Training requirements for social service personnel.

(a) The agency or person provides newly hired employees who have adoption-related responsibilities involving the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement, and other similar services) with a comprehensive orientation to intercountry adoption that includes training on:

(1) The requirements of the Convention, the IAA, the UAA, the regulations implementing the IAA and the UAA, and other applicable Federal regulations;

(2) The INA provisions applicable to the immigration of children described in INA 101(b)(1)(F) and (G) and the applicable regulations contained in 8 CFR 204.3 and 204.300 through 204.314;

(3) The adoption laws of any foreign country where the agency or person provides adoption services;

(4) Relevant State laws;

(5) Ethical considerations in intercountry adoption and prohibitions on child-buying;

(6) The agency's or person's goals, ethical and professional guidelines,

organizational lines of accountability, policies, and procedures; and

(7) The cultural diversity of the population(s) served by the agency or person.

(b) In addition to the orientation training required under paragraph (a) of this section, the agency or person provides initial training to newly hired or current employees whose responsibilities include providing adoption-related social services that involve the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement, and other similar services) that addresses:

(1) The factors in foreign countries that lead to children needing adoptive families;

(2) Feelings of separation, grief, and loss experienced by the child with respect to the family of origin;

(3) Adverse childhood experiences, attachment, and post-traumatic stress disorders;

(4) Physical, psychological, cognitive, and emotional issues facing children who have experienced trauma, abuse, including sexual abuse, or neglect, and/or whose parents' parental rights have been terminated, and the increased risk of such issues in older children;

(5) The long-term impact of institutionalization on child development;

(6) Outcomes for children placed for adoption internationally and the benefits of permanent family placements over other forms of government care;

(7) The most frequent sociological, medical, and psychological problems experienced by children from the countries served by the agency or person, and the possibility that such problems may not be reflected in the medical reports transmitted to prospective adoptive parents;

(8) The process of developing emotional ties to an adoptive family;

(9) Acculturation and assimilation issues, including those arising from factors such as race, ethnicity, religion, and culture and the impact of having been adopted internationally; and

(10) Child, adolescent, and adult development as affected by adoption.

(c) The agency or person ensures that employees who provide adoption-related social services that involve the application of clinical skills and judgment (home studies, child background studies, counseling services, parent preparation, post-placement, and other similar services) also receive, in addition to the orientation and initial training

described in paragraphs (a) and (b) of this section, no less than 30 hours of training every two years, or more if required by State law, on current and emerging adoption practice issues through participation in seminars, conferences, documented distance learning courses, and other similar programs. Continuing education hours required under State law may count toward the 30 hours of training as long as the training is related to current and emerging adoption practice issues.

(d) The agency or person exempts newly hired employees from elements of the orientation and initial training required in paragraphs (a) and (b) of this section if the newly hired individual was, within the previous two years, employed by an accredited or approved adoption service provider where they had received orientation training pursuant to paragraphs (a) and (b) of this section and §§ 96.39 and 96.40.

#### **Information Disclosure, Fee Practices, and Quality Control Policies and Practices**

##### **§ 96.39 Information disclosure and quality control practices.**

(a) The agency or person fully discloses in writing to the general public upon request and to prospective client(s) upon initial contact:

(1) Its adoption service policies and practices, including general eligibility criteria and fees, including fees for supervised and exempted providers;

(2) A sample written adoption services contract substantially like the one that the prospective client(s) will be expected to sign should they proceed;

(b) The agency or person discloses to client(s) and prospective client(s) that the following information is available upon request and makes such information available when requested:

(1) The number of its adoption placements per year for the prior three calendar years, and the number and percentage of those placements that remain intact, are disrupted, or have been dissolved as of the time the information is provided;

(2) The number of parents who apply to adopt on a yearly basis, based on data for the prior three calendar years; and

(3) The number of children eligible for adoption and awaiting an adoptive placement referral via the agency or person.

(c) The agency or person does not give preferential treatment to its board members, contributors, volunteers, employees, agents, consultants, or independent contractors with respect to the placement of children for adoption and has a written policy to this effect.

(d) The agency or person requires a client to sign a waiver of liability as part of the adoption service contract only where that waiver complies with applicable State law, and these regulations. Any waiver required is limited and specific, based on risks that have been discussed and explained to the client in the adoption services contract.

(e) The agency or person cooperates with reviews, inspections, and audits by the accrediting entity or the Secretary.

(f) The agency or person uses the internet in the placement of individual children eligible for adoption only where:

(1) Such use is not prohibited by applicable State or Federal law or by the laws of the child's country of origin;

(2) Such use is subject to controls to avoid misuse and links to any sites that reflect practices that involve the sale, abduction, exploitation, or trafficking of children;

(3) Such use, if it includes photographs, is designed to identify children either who are currently waiting for adoption or who have already been adopted or placed for adoption (and who are clearly so identified); and

(4) Such use does not serve as a substitute for the direct provision of adoption services, including services to the child, the prospective adoptive parent(s), and/or the birth parent(s).

##### **§ 96.40 Fee policies and procedures.**

(a) *In general.* On its website, the agency or person discloses the following:

(1) A written schedule of expected fees and estimated expenses conforming to each of the categories of adoption expenses in the United States found in paragraph (b) of this section and in foreign countries found in paragraph (c) of this section; and

(2) An explanation of the conditions under which fees or expenses may be charged, waived, or reduced, a statement that fees or expenses will be refunded for any service not provided, and information regarding when and how the fees and expenses must be paid.

(3) If prospective adoptive parent(s) contact an agency or person after initiating or completing an adoption on their own behalf, the agency or person identifies in writing which adoption service(s) it will provide and the expected total fees and estimated expenses for each remaining service, or the fees for acting as a primary provider.

(b) *Expected fees and estimated expenses in the United States:* Before providing any adoption service to

prospective adoptive parent(s), the agency or person itemizes and discloses in writing the expected fees and expenses in the United States in connection with an intercountry adoption, including, but not limited to, the following:

(1) *Home study, training, preparation, post-placement and post-adoption reporting and expenses.* (i) Expected fees and estimated expenses for home study preparation and approval, whether the home study is to be prepared directly by the agency or person itself, or prepared by a supervised provider, exempted provider, or approved person, and approved as required under § 96.47(c), or prepared by a public domestic authority and the agency or person collects the associated fees;

(ii) Expected fees and estimated expenses for training and preparation of the prospective adoptive parents; and

(iii) Expected fees and estimated expenses for preparation of post-placement and/or post-adoption reports.

(2) *Medical expenses related to the child.* Expected fees and estimated expenses for pre-adoption consultation, examinations, opinions, or certificates from medical professionals in the United States.

(3) *Overhead and operating costs.* (i) Operational costs and estimated expenses incurred in the United States that will be charged on a pro rata basis related to operating programs in the foreign country, such as but not limited to the agency's or person's employee travel to the foreign country; and

(ii) Operational costs that will be charged on a pro rata basis to include personnel costs for personnel in the United States, administrative overhead, communications and publications costs, training and education for personnel, and other operational costs.

(4) *Legal and court fees.* Expected fees and estimated expenses provided for a specific adoption:

(i) For anticipated legal services provided in the United States; and

(ii) For U.S. court or other adjudicative fees.

(5) *Travel expenses.* If any travel, transportation, or accommodation services are to be arranged by the agency or person for the prospective adoptive parent(s), the expected fees and estimated expenses for these services; if travel, transportation, or accommodation services are not arranged by the agency or person for the prospective adoptive parents, an estimate of the direct cost to the prospective adoptive parents of travel, transportation, or accommodation services. The disclosure of estimated



direct costs of travel-related expenses incurred by prospective adoptive parents excludes *de minimis* travel expenses, such as, but not limited to, same day travel in the prospective adoptive parent's own vehicle.

(6) *Fees for provision of adoption services.* Expected fees and estimated expenses for providers of adoption services, including:

(i) Supervised providers in the United States; and

(ii) Exempted providers in the United States.

(7) *Translation and documentation expenses.* Expected fees and estimated expenses for obtaining any necessary documents and for any translation of documents related to the adoption, along with information on whether the prospective adoptive parent(s) will be expected to pay such costs directly or to third parties, or through the agency or person. This category includes, but is not limited to, costs for obtaining, translating, or copying records or documents required to complete the adoption; costs for the child's court documents, passport, adoption certificate and other documents related to the adoption; and costs for authentications, for notarizations and for certifications in the United States.

(c) *Expected fees and estimated expenses in a foreign country of origin.* Before providing any adoption service to prospective adoptive parent(s), the agency or person itemizes and discloses in writing the expected fees and expenses in connection with an intercountry adoption in the foreign country as follows:

(1) *Medical expenses related to the child.* Expected fees and estimated expenses for consultations, examinations, opinions, or certificates from medical professionals in the foreign country.

(2) *Fees to cover overhead and operating costs.* Operational costs that will be charged on a pro rata basis in the foreign country, such as overhead or operating expenses in support of the agency's or person's foreign activities relating to intercountry adoption in general.

(3) *Legal and court fees.* Expected fees and estimated expenses provided for a specific adoption:

(i) For anticipated legal services in the foreign country; and

(ii) For foreign court or other adjudicative fees.

(4) *Support for child welfare.* Any fixed contribution, amount, or percentage that prospective adoptive parent(s) will be expected or required to make to child protection or child welfare service programs in the foreign

country, including, but not limited to, contributions to orphanages or child welfare centers for food, clothing, shelter, medical care, or foster care services. The disclosure must include an explanation of the intended use of the contribution and the manner in which the contribution will be recorded and accounted for. Any such required contribution shall comply with the requirements of § 96.36. The agency or person collecting such amounts shall ensure:

(i) That payments made to child protection or child welfare service programs comply with the requirements of § 96.36 and are not unreasonably high in relation to the actual cost of goods or services in the country in which the goods or services are provided; and

(ii) The agency or person does not require prospective adoptive parents to pay regular fees or contributions that are connected to the care of a particular child or are based on the length of time an adoption takes to complete. The agency or person shall not arrange, facilitate, or encourage such payments directly between prospective adoptive parents or any individual, entity, or orphanage.

(5) *Travel expenses.* Expected fees and estimated expenses incurred in the foreign country for travel, guide, interpretation, accommodations, or other services provided to prospective adoptive parents in the foreign country and arranged by the agency or person, and for which the prospective adoptive parents would be responsible.

(6) *Fees for provision of adoption services.* Expected fees and estimated expenses for providers of adoption services, including supervised providers in the foreign country, specifying in its adoption services contract that the primary provider will bill prospective adoptive parents for fees and expenses of foreign supervised providers. Likewise, the primary provider will pay foreign supervised providers for services rendered to prospective adoptive parents, leaving no direct billing by or payment to foreign supervised providers.

(7) *Fees for other individuals or entities.* (i) Expected fees and estimated expenses to or for the Central Authority, competent authority, or public foreign authority of the government of the foreign country, including but not limited to fees charged for services rendered or for processing fees; and

(ii) Expected fees and estimated expenses paid to other individuals or entities in the foreign country either directly or through the agency or person or its supervised or other provider.

(8) *Translation and document expenses.* Expected fees and estimated expenses for obtaining any necessary documents and for any translation of documents related to the adoption, along with information on whether prospective adoptive parents will be expected to pay such costs directly or to third parties, or through the agency or person. This category includes, but is not limited to, costs for obtaining, translating, or copying records or documents required to complete the adoption, costs for the child's court documents, passport, adoption certificate, and other documents related to the adoption, and costs for authentications, notarizations, certifications in the foreign country;

(d) *All other fees and estimated expenses.* All other fees and estimated expenses not recorded and disclosed in paragraph (c) of this section must be recorded as part of paragraph (b) of this section, including expected fees and estimated expenses charged to prospective adoptive parents residing in a third country or in the foreign country.

(e) *Informing the accrediting entity of expected fees and estimated expenses.* Agencies and persons shall provide the accrediting entity with an itemized schedule of fees for each country for which the agency or person has an intercountry adoption program that includes the fee information established in paragraphs (b) and (c) of this section.

(f) *Segregation of client fees for services not yet rendered.* The agency or person will segregate client fees collected for services not yet rendered. These segregated funds shall not be included in the agency or person's cash reserves or assets for purposes of meeting the balance sheets requirements of § 96.33(e). The agency or person also specifies in its adoption services contract that funds advanced to cover fees or expenses will be refunded for any service not provided. Refunds must be issued within 60 days unless State law requires refunds within a shorter time period.

(g) *Disclosing fees for special services.* When the agency or person uses part of its fees to provide special services, such as cultural programs for adoptee(s), scholarships, or other services, it discloses this practice to prospective adoptive parents in advance of providing any adoption services and gives prospective adoptive parents a general description of the programs supported by such funds.

(h) *Transferring funds to foreign countries.* The agency or person has mechanisms in place for transferring funds to foreign countries when the financial institutions of the foreign

country so permit and for obtaining written receipts for such transfers, so that direct cash transactions by prospective adoptive parents to pay for adoption services provided in the country are minimized or unnecessary and consistent with paragraph (i) of this section.

(i) *Unforeseen additional fees and expenses.* The agency or person does not customarily charge additional fees and expenses beyond those disclosed in the adoption services contract and has a written policy to this effect. In the event that unforeseen additional fees and expenses are incurred, the agency or person charges such additional fees and expenses only under the following conditions:

(1) It discloses the fees and expenses in writing to the prospective adoptive parents;

(2) It obtains the specific consent of prospective adoptive parents prior to expending any funds in excess of \$1,000 for which the agency or person will hold prospective adoptive parents responsible; and.

(3) It provides written receipts to prospective adoptive parents for fees and expenses paid directly by the agency or person in the foreign country and retains copies of such receipts.

(j) *Returning fees to prospective adoptive parents.* The agency or person returns any funds to which prospective adoptive parents may be entitled within 60 days of the completion of the delivery of services.

### **Responding to Complaints and Records and Reports Management**

#### **§ 96.41 Procedures for responding to complaints and improving service delivery.**

(a) The agency or person has written complaint policies and procedures that incorporate the standards in paragraphs (b) through (h) of this section and provides a copy of such policies and procedures, including contact information for the Complaint Registry, to clients at the time the adoption services contract is signed.

(b) The agency or person accepts complaints from any individual or entity. The agency or person advises such individuals or entities of the additional procedures available to them under subpart J of this part and the accrediting entity's policies and procedures if they are dissatisfied with the agency's or person's response to their complaint.

(c) The agency or person responds in writing to complaints received pursuant to paragraph (b) of this section within 30 days of receipt and provides expedited review of such complaints

that are time-sensitive or that involve allegations of fraud.

(d) The agency or person maintains a written record of each complaint received pursuant to paragraph (b) of this section and the steps taken to investigate and respond to it and makes this record available to the accrediting entity or the Secretary upon request.

(e) The agency or person does not take any action to discourage an individual or entity from, or retaliate against an individual or entity for: Making a complaint; expressing a grievance; providing information in writing or interviews to an accrediting entity on the agency's or person's performance; or questioning the conduct of or expressing an opinion about the performance of an agency or person.

(f) The agency or person provides to the accrediting entity and the Secretary, on a semi-annual basis, a summary of all complaints received pursuant to paragraph (b) of this section during the preceding six months (including the number of complaints received and how each complaint was resolved) and an assessment of any discernible patterns in complaints received against the agency or person pursuant to paragraph (b) of this section, along with information about what systemic changes, if any, were made or are planned by the agency or person in response to such patterns.

(g) The agency or person provides any information about complaints received pursuant to paragraph (b) of this section as may be requested by the accrediting entity or the Secretary.

(h) The agency or person has a quality improvement program appropriate to its size and circumstances through which it makes systematic efforts to improve its adoption services as needed. The agency or person uses quality improvement methods such as reviewing complaint data, using client satisfaction surveys, or comparing the agency's or person's practices and performance against the data contained in the Secretary's annual reports to Congress on intercountry adoptions.

#### **§ 96.42 Retention, preservation, and disclosure of adoption records.**

(a) The agency or person retains or archives adoption records in a safe, secure, and retrievable manner for the period of time required by applicable State law.

(b) The agency or person makes readily available to the adoptee and the adoptive parent(s) of minor children upon request all information in its custody about the adoptee's health history or background, to the extent permitted by State law.

(c) The agency or person ensures that personal data gathered or transmitted in connection with an adoption is used only for the purposes for which the information was gathered and safeguards sensitive individual information.

(d) The agency or person has a plan that is consistent with the provisions of this section, the plan required under § 96.33, and applicable State law for transferring custody of adoption records that are subject to retention or archival requirements to an appropriate custodian, and ensuring the accessibility of those adoption records, in the event that the agency or person ceases to provide or is no longer permitted to provide adoption services in intercountry adoption cases.

(e) The agency or person notifies the accrediting entity and the Secretary in writing within 30 days of the time it ceases to provide or is no longer permitted to provide adoption services and provides information about the transfer of its adoption records.

#### **§ 96.43 Case tracking, data management, and reporting.**

(a) When acting as the primary provider, the agency or person maintains all the data required in this section in a format approved by the accrediting entity and provides it to the accrediting entity on an annual basis.

(b) When acting as the primary provider, the agency or person routinely generates and maintains reports as follows:

(1) For cases involving children immigrating to the United States, information and reports on the total number of Convention and non-Convention adoptions undertaken by the agency or person each year and, for each case:

(i) The foreign country from which the child emigrated;

(ii) The State to which the child immigrated;

(iii) The State or foreign country in which the adoption was finalized;

(iv) The age of the child; and

(v) The date of the child's placement for adoption.

(2) For cases involving children emigrating from the United States, information and reports on the total number of Convention and non-Convention adoptions undertaken by the agency or person each year and, for each case:

(i) The State from which the child emigrated;

(ii) The foreign country to which the child immigrated;

(iii) The State or foreign country in which the adoption was finalized;

(iv) The age of the child; and  
 (v) The date of the child's placement for adoption.

(3) For each disrupted placement involving an intercountry adoption, information and reports about the disruption, including information on:

- (i) The child's country of origin;
- (ii) The State to which the child immigrated, if applicable;
- (iii) The age of the child;
- (iv) The date of the child's placement for adoption;
- (v) The citizenship of the child;
- (vi) The location of the child's adoption documentation and documentation relating to the citizenship or immigration status of the child;
- (vii) The last known physical location of the child;
- (viii) The name of legal guardian(s) or physical custodian(s) of the child;
- (ix) The reason(s) for and resolution(s) of the disruption of the placement for adoption, including information on the child's secondary placement for adoption and final legal adoption;
- (x) The names of the agencies or persons that handled the placement for adoption;
- (xi) The plans for the child; and
- (xii) Which authorities have been notified of the disruption.

(4) Wherever possible, for each dissolution of an intercountry adoption, information and reports on the dissolution, including information on:

- (i) The child's country of origin;
- (ii) The State to which the child immigrated, if applicable;
- (iii) The age of the child;
- (iv) The date of the child's placement for adoption;
- (v) The citizenship of the child;
- (vi) The location of the child's adoption documentation and documentation relating to the citizenship or immigration status of the child;
- (vii) The last known physical location of the child;
- (viii) The name of legal guardians or physical custodian of the child;
- (ix) The reason(s) for and resolution(s) of the dissolution of the adoption, to the extent known by the agency or person;
- (x) The names of the agencies or persons that handled the placement for adoption;
- (xi) The plans for the child; and
- (xii) Which authorities have been notified of the dissolution.

(5) Information on the shortest, longest, and average length of time it takes to complete an intercountry adoption, set forth by the child's country of origin, calculated from the time the child is matched with the

prospective adoptive parent(s) until the time the adoption is finalized by a judicial or administrative body, excluding any period for appeal.

(6) Information on the range of adoption fees and expenses, including the lowest, highest, average, and the median of such fees and expenses charged to prospective adoptive parents for intercountry adoptions involving children immigrating to the United States in connection with their adoption for each category in § 96.40(b) and (c).

(c) If the agency or person provides adoption services in cases not subject to the Convention that involve a child emigrating from the United States for the purpose of adoption or after an adoption has been finalized, it provides such information as required by the Secretary directly to the Secretary and demonstrates to the accrediting entity that it has provided this information.

(d) The agency or person provides any of the information described in paragraphs (a) through (c) of this section to the accrediting entity or the Secretary upon request.

#### Service Planning and Delivery

##### § 96.44 Acting as primary provider.

(a) When required by § 96.14(a), the agency or person acts as primary provider and adheres to the provisions in § 96.14(b) through (e). When acting as the primary provider, the agency or person develops and implements a service plan for providing all adoption services and provides all such services, either directly or through arrangements with supervised providers, exempted providers, public domestic authorities, competent authorities, Central Authorities, public foreign authorities, or, to the extent permitted by § 96.14(c), other foreign providers (agencies, persons, or other non-governmental entities).

(b) The agency or person has an organizational structure, financial and personnel resources, and policies and procedures in place that demonstrate that the agency or person is capable of acting as a primary provider in any intercountry adoption case and, when acting as the primary provider, provides appropriate supervision to supervised providers, and verifies the work of other foreign providers in accordance with §§ 96.45 and 96.46.

##### § 96.45 Using supervised providers in the United States.

(a) The agency or person, when acting as the primary provider and using supervised providers in the United States to provide adoption services, ensures that each such supervised provider:

(1) Is in compliance with applicable State licensing and regulatory requirements in all jurisdictions in which it provides adoption services;

(2) In providing any adoption service, complies with the Convention, the IAA, the UAA, and regulations implementing the IAA and the UAA;

(3) Does not engage in practices inconsistent with the Convention's principles of furthering the best interests of the child and preventing the sale, abduction, exploitation, or trafficking of children; and

(4) Before entering into an agreement with the primary provider for the provision of adoption services, discloses to the primary provider the suitability information listed in § 96.35.

(b) The agency or person, when acting as the primary provider and using supervised providers in the United States to provide adoption services, ensures that each such supervised provider operates under a written agreement with the primary provider that:

(1) Identifies clearly the adoption service(s) to be provided by the supervised provider and requires that the service(s) be provided in accordance with the applicable service standard(s) for accreditation and approval (for example: home study (§ 96.47); parent training (§ 96.48); child background studies and consent (§ 96.53));

(2) Requires the supervised provider to comply with the following standards regardless of the type of adoption services it is providing: § 96.36 (prohibition on child buying), § 96.34 (compensation), § 96.38 (employee training), § 96.39(d) (waivers of liability), and § 96.41(b) through (e) (complaints);

(3) Identifies specifically the lines of authority between the primary provider and the supervised provider, the employee of the primary provider who will be responsible for supervision, and the employee of the supervised provider who will be responsible for ensuring compliance with the written agreement;

(4) States clearly the compensation arrangement for the services to be provided and the fees and expenses to be charged by the supervised provider;

(5) Specifies whether the supervised provider's fees and expenses will be billed to and paid by the client(s) directly or billed to the client through the primary provider;

(6) Provides that, if billing the client(s) directly for its service, the supervised provider will give the client(s) an itemized bill of all fees and expenses to be paid, with a written explanation of how and when such fees and expenses will be refunded if the

service is not completed, and will return any funds collected to which the client(s) may be entitled within 60 days of the completion of the delivery of services;

(7) Requires the supervised provider to meet the same personnel qualifications as accredited agencies and approved persons, as provided for in § 96.37, except that, for purposes of § 96.37(e)(3), (f)(3), and (g)(2), the work of the employee must be supervised by an employee of an accredited agency or approved person;

(8) Requires the supervised provider to limit the use of and safeguard personal data gathered or transmitted in connection with an adoption, as provided for in § 96.42;

(9) Requires the supervised provider to respond within a reasonable period of time to any request for information from the primary provider, the Secretary, or an accrediting entity;

(10) Requires the supervised provider to provide the primary provider on a timely basis any data that is necessary to comply with the primary provider's reporting requirements;

(11) Requires the supervised provider to disclose promptly to the primary provider any changes in the suitability information required by § 96.35; and

(12) Permits suspension or termination of the agreement on reasonable notice if the primary provider has grounds to believe that the supervised provider is not in compliance with the agreement or the requirements of this section.

#### **§ 96.46 Using providers in foreign countries.**

(a) The agency or person, when acting as the primary provider and using foreign supervised providers to provide adoption services in foreign countries, ensures that each such foreign supervised provider:

(1) Is in compliance with the laws of the foreign country in which it operates;

(2) Does not engage in practices inconsistent with the Convention's principles of furthering the best interests of the child and preventing the sale, abduction, exploitation, or trafficking of children;

(3) Before entering into an agreement with the primary provider for the provision of adoption services, discloses to the primary provider the suitability information listed in § 96.35, taking into account the authorities in the foreign country that are analogous to the authorities identified in that section;

(4) Does not have a pattern of licensing suspensions or other sanctions and has not lost the right to provide adoption services in any jurisdiction for

reasons germane to the Convention or the Convention's principles of furthering the best interests of the child and preventing the abduction, exploitation, sale, or trafficking of children; and

(5) Is accredited in the foreign country in which it operates, if such accreditation is required by the laws of that foreign country to perform the adoption services it is providing.

(b) The agency or person, when acting as the primary provider and using foreign supervised providers to provide adoption services in foreign countries, ensures that each such foreign supervised provider operates under a written agreement with the primary provider that:

(1) Identifies clearly the adoption service(s) to be provided by the foreign supervised provider;

(2) Requires the foreign supervised provider, if responsible for obtaining medical or social information on the child, to comply with the standards in § 96.49(d) through (j);

(3) Requires the foreign supervised provider to adhere to the standard in § 96.36(a) prohibiting child buying and to have written policies and procedures in place reflecting the prohibitions in § 96.36(a) and to reinforce them in training programs for its employees and agents;

(4) Requires the foreign supervised provider to compensate its directors, officers, and employees who provide intercountry adoption services on a fee-for-service, hourly wage, or salary basis, rather than based on whether a child is placed for adoption, located for an adoptive placement, or on a similar contingent fee basis;

(5) Identifies specifically the lines of authority between the primary provider and the foreign supervised provider, the employee of the primary provider who will be responsible for supervision, and the employee of the supervised provider who will be responsible for ensuring compliance with the written agreement;

(6) States clearly the compensation arrangement for the services to be provided and the fees and expenses to be charged by the foreign supervised provider;

(7) Specifies that the foreign supervised provider's fees and expenses will be billed to and paid by the client(s) through the primary provider;

(8) Requires the foreign supervised provider to respond within a reasonable period of time to any request for information from the primary provider, the Secretary, or the accrediting entity that issued the primary provider's accreditation or approval;

(9) Requires the foreign supervised provider to provide the primary provider on a timely basis any data that is necessary to comply with the primary provider's reporting requirements;

(10) Requires the foreign supervised provider to disclose promptly to the primary provider any changes in the suitability information required by § 96.35; and

(11) Permits suspension or termination of the agreement on reasonable notice if the primary provider has grounds to believe that the foreign supervised provider is not in compliance with the agreement or the requirements of this section.

(c) The agency or person, when acting as the primary provider and, in accordance with § 96.14, using foreign providers that are not under its supervision, verifies, through review of the relevant documentation and other appropriate steps, that:

(1) Any necessary consent to termination of parental rights or to adoption obtained by the foreign provider was obtained in accordance with applicable foreign law and Article 4 of the Convention;

(2) Any background study and report on a child in a case involving immigration to the United States (an incoming case) performed by the foreign provider was performed in accordance with applicable foreign law and Article 16 of the Convention.

(3) Any home study and report on prospective adoptive parents in a case involving emigration from the United States (an outgoing case) performed by the foreign provider was performed in accordance with applicable foreign law and Article 15 of the Convention.

#### **Standards for Cases in Which a Child Is Immigrating to the United States (Incoming Cases)**

##### **§ 96.47 Preparation of home studies in incoming cases.**

(a) The agency or person ensures that a home study on the prospective adoptive parent(s) (which for purposes of this section includes the initial report and any supplemental updates(s) submitted to DHS) is completed that includes the following:

(1) Information about the identity, eligibility and suitability of the prospective adoptive parent(s) to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of the children for whom the prospective adoptive parent(s) would be qualified to care (specifying in particular whether they are willing and

able to care for a child with special needs);

(2) A determination of the eligibility and suitability of the prospective adoptive parent(s) to adopt;

(3) A statement describing the counseling and training provided to the prospective adoptive parent(s);

(4) The results of a criminal background check on the prospective adoptive parent(s) and any other individual for whom a check is required by 8 CFR 204.311;

(5) A full and complete statement of all facts relevant to the eligibility and suitability of the prospective adoptive parent(s) to adopt a child under any specific requirements identified to the Secretary by the Central Authority of the child's country of origin; and

(6) A statement in each copy of the home study that it is a true and accurate copy of the home study that was provided to the prospective adoptive parent(s) or DHS.

(b) The agency or person ensures that the home study is performed in accordance with 8 CFR 204.311 and any applicable State law.

(c) Where the home study is not performed in the first instance by an accredited agency, the agency or person ensures that the home study is reviewed and approved in writing by an accredited agency. The written approval must include a determination that the home study:

(1) Includes all of the information required by paragraph (a) of this section and is performed in accordance with 8 CFR 204.311, and applicable State law; and

(2) Was performed by an individual who meets the requirements in § 96.37(f), or, if the individual is an exempted provider, ensures that the individual meets the requirements for home study providers established by 8 CFR 204.301.

(d) The agency or person takes all appropriate measures to ensure the timely transmission of the same home study that was provided to the prospective adoptive parent(s) or to DHS to the Central Authority of the child's country of origin (or to an alternative authority designated by that Central Authority).

(e) If, based on new information relating to paragraph (a)(1) of this section or 8 CFR 204.311, the agency or person withdraws its recommendation of the prospective adoptive parent(s) for adoption, or the agency that reviewed and approved a home study withdraws any such approval of the home study required under paragraph (c) of this section, the agency or person must:

(1) Notify the prospective adoptive parent(s), and if applicable, the home study preparer, of its withdrawal and the reasons for its withdrawal, in writing, within 5 business days of the decision, and prior to notifying USCIS;

(2) Notify USCIS of its withdrawal of its recommendation and/or approval and the reasons for its withdrawal, in writing, and within 5 business days of notifying the prospective adoptive parent(s), in accordance with the agency's or person's ethical practices and responsibilities under § 96.35(a);

(3) Maintain written records of the withdrawal of its recommendation and/or approval and the good cause reasons for the withdrawal;

(4) Handle fees for services not yet performed in accordance with § 96.40; and

(5) Comply with any applicable State law requirements and notify any State competent authority discussed in 8 CFR 204.311(t).

**§ 96.48 Preparation and training of prospective adoptive parent(s) in incoming cases.**

(a) The agency or person provides prospective adoptive parent(s) with at least ten hours (independent of the home study) of preparation and training, as described in paragraphs (b) and (c) of this section, designed to promote a successful intercountry adoption. The agency or person provides such training before the prospective adoptive parent(s) travel to adopt the child or the child is placed with the prospective adoptive parent(s) for adoption.

(b) The training provided by the agency or person addresses the following topics:

(1) The intercountry adoption process, the general characteristics and needs of children awaiting adoption, and the in-country conditions that affect children in the foreign country from which the prospective adoptive parent(s) plan to adopt;

(2) The effects on children of malnutrition, relevant environmental toxins, maternal substance abuse, and of any other known genetic, health, emotional, and developmental risk factors associated with children from the expected country of origin;

(3) Information about the impact on a child of leaving familiar ties and surroundings, as appropriate to the expected age of the child;

(4) Data on institutionalized children and the impact of institutionalization on children, including the effect on children of the length of time spent in an institution and of the type of care provided in the expected country of origin;

(5) Information on attachment disorders and other emotional problems that institutionalized or traumatized children and children with a history of multiple caregivers may experience, before and after their adoption;

(6) Information on the laws and adoption processes of the expected country of origin, including foreseeable delays and impediments to finalization of an adoption;

(7) Information on the long-term implications for a family that has become multicultural through intercountry adoption; and

(8) An explanation of any reporting requirements associated with intercountry adoptions, including any post-placement or post-adoption reports required by the expected country of origin.

(c) The agency or person also provides the prospective adoptive parent(s) with training that allows them to be as fully prepared as possible for the adoption of a particular child. This includes counseling on:

(1) The child's history and cultural, racial, religious, ethnic, and linguistic background;

(2) The known health risks in the specific region or country where the child resides; and

(3) Any other medical, social, background, birth history, educational data, developmental history, or any other data known about the particular child.

(d) The agency or person provides such training through appropriate methods, including:

(1) Collaboration among agencies or persons to share resources to meet the training needs of prospective adoptive parents;

(2) Group seminars offered by the agency or person or other agencies or training entities;

(3) Individual counseling sessions;

(4) Video, computer-assisted, or distance learning methods using standardized curricula; or

(5) In cases where training cannot otherwise be provided, an extended home study process, with a system for evaluating the thoroughness with which the topics have been covered.

(e) The agency or person provides additional in-person, individualized counseling and preparation, as needed, to meet the needs of the prospective adoptive parent(s) in light of the particular child to be adopted and his or her special needs, and any other training or counseling needed in light of the child background study or the home study.

(f) The agency or person provides the prospective adoptive parent(s) with

information about print, internet, and other resources available for continuing to acquire information about common behavioral, medical, and other issues; connecting with parent support groups, adoption clinics and experts; and seeking appropriate help when needed.

(g) The agency or person exempts prospective adoptive parent(s) from all or part of the training and preparation that would normally be required for a specific adoption only when the agency or person determines that the prospective adoptive parent(s) have received adequate prior training or have prior experience as parent(s) of children adopted from abroad.

(h) The agency or person records the nature and extent of the training and preparation provided to the prospective adoptive parent(s) in the adoption record.

**§ 96.49 Provision of medical and social information in incoming cases.**

(a) The agency or person provides a copy of the child's medical records (including, to the fullest extent practicable, a correct and complete English-language translation of such records) to the prospective adoptive parent(s) as early as possible, but no later than two weeks before either the adoption or placement for adoption, or the date on which the prospective adoptive parent(s) travel to the foreign country to complete all procedures in such country relating to the adoption or placement for adoption, whichever is earlier.

(b) Where any medical record provided pursuant to paragraph (a) of this section is a summary or compilation of other medical records, the agency or person includes those underlying medical records in the medical records provided pursuant to paragraph (a) of this section if they are available.

(c) The agency or person provides the prospective adoptive parent(s) with any untranslated medical reports or videotapes or other reports and provides an opportunity for the client(s) to arrange for their own translation of the records, including a translation into a language other than English, if needed.

(d) The agency or person itself uses reasonable efforts, or requires its supervised provider in the child's country of origin who is responsible for obtaining medical information about the child on behalf of the agency or person to use reasonable efforts, to obtain available information, including in particular:

(1) The date that the foreign country or other child welfare authority

assumed custody of the child and the child's condition at that time;

(2) History of any significant illnesses, hospitalizations, special needs, and changes in the child's condition since the foreign country or other child welfare authority assumed custody of the child;

(3) Growth data, including prenatal and birth history, and developmental status over time and current developmental data at the time of the child's referral for adoption; and

(4) Specific information on the known health risks in the specific region or country where the child resides.

(e) When the agency or person provides medical information, other than the information provided by public foreign authorities, to the prospective adoptive parent(s) from an examination by a physician or from an observation of the child by someone who is not a physician, the agency or person uses reasonable efforts to include the following:

(1) The name and credentials of the physician who performed the examination or the individual who observed the child;

(2) The date of the examination or observation; how the report's information was retained and verified; and if anyone directly responsible for the child's care has reviewed the report;

(3) If the medical information includes references, descriptions, or observations made by any individual other than the physician who performed the examination or the individual who performed the observation, the identity of that individual, the individual's training, and information on what data and perceptions the individual used to draw his or her conclusions;

(4) A review of hospitalizations, significant illnesses, and other significant medical events, and the reasons for them;

(5) Information about the full range of any tests performed on the child, including tests addressing known risk factors in the child's country of origin; and

(6) Current health information.

(f) The agency or person itself uses reasonable efforts, or requires its supervised provider in the child's country of origin who is responsible for obtaining social information about the child on behalf of the agency or person to use reasonable efforts, to obtain available information, including in particular:

(1) Information about the child's birth family and prenatal history and cultural, racial, religious, ethnic, and linguistic background;

(2) Information about all of the child's past and current placements prior to adoption, including, but not limited to any social work or court reports on the child and any information on who assumed custody and provided care for the child; and

(3) Information about any birth siblings whose existence is known to the agency or person, or its supervised provider, including information about such siblings' whereabouts.

(g) Where any of the information listed in paragraphs (d), (e), and (f) of this section cannot be obtained, the agency or person documents in the adoption record the efforts made to obtain the information and why it was not obtainable. The agency or person continues to use reasonable efforts to secure those medical or social records that could not be obtained up until the adoption is finalized.

(h) Where available, the agency or person provides information for contacting the examining physician or the individual who made the observations to any physician engaged by the prospective adoptive parent(s), upon request.

(i) The agency or person ensures that any videotapes and photographs of the child taken by the agency or person (including by their supervised providers) are identified by the date on which the videotape or photograph was recorded or taken and that they were made in compliance with the laws in the country where recorded or taken.

(j) The agency or person does not withhold from or misrepresent to the prospective adoptive parent(s) any available medical, social, or other pertinent information concerning the child.

(k) The agency or person does not withdraw a referral until the prospective adoptive parent(s) have had two weeks (unless extenuating circumstances involving the child's best interests require a more expedited decision) to consider the needs of the child and their ability to meet those needs, and to obtain physician review of medical information and other descriptive information, including videotapes of the child if available.

**§ 96.50 Placement and post-placement monitoring until final adoption in incoming cases.**

(a) The agency or person takes all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances, with properly trained and qualified escorts, if used, and, if possible, in the company of the prospective adoptive parent(s).

(b) In the post-placement phase, the agency or person monitors and supervises the child's placement to ensure that the placement remains in the best interests of the child, and ensures that at least the number of home visits required by State law or by the child's country of origin are performed, whichever is greater.

(c) When a placement for adoption is in crisis in the post-placement phase in the United States, the agency or person takes all appropriate measures to:

(1) Provide or arrange for counseling by an individual or entity with appropriate skills to assist the family in dealing with the problems that have arisen;

(2) Inform the parents of local and State laws, legal procedures and resources pertaining to disruption and dissolution and appropriate measures for making another placement of the child;

(3) Explain potential risks and implications for the child; and

(4) Provide resources for addressing potential future crises including disruption and dissolution.

(d) When a placement for adoption is in crisis in the post-placement phase in the foreign country, the agency or person takes all appropriate measures to:

(1) Provide or arrange for counseling by an individual or entity with appropriate skills to assist the family in dealing with the problems that have arisen;

(2) Inform the parents of applicable foreign laws, legal procedures and resources pertaining to disruption and dissolution;

(3) Inform the parents of applicable State and federal laws and guidelines pertaining to disruption and dissolution;

(4) Explain potential risks and implications for the child; and

(5) Provide resources for addressing potential future crises, including disruption and dissolution.

(e) The agency or person notifies the Secretary and, in consultation with the Secretary, informs the Central Authority of the child's country of origin within 24 hours of discovering a parent's intent to disrupt the placement.

(f) If the placement is disrupted in the United States, the agency or person:

(1) Assumes responsibility for making another placement of the child, in consideration of the best interests of the child and the impact of the new placement on any siblings;

(2) Ensures any new placement includes information about sibling relationships, outstanding post-

placement reporting requirements, and the child's citizenship status; and

(3) Notifies the Secretary and, in consultation with the Secretary, informs the Central Authority of the child's country of origin of the disruption of the placement, within 24 hours of discovering such information.

(g) If the placement is disrupted in the foreign country, the agency or person:

(1) Ensures the safe and timely transfer or temporary placement of the child;

(2) Notifies local child welfare authorities within 24 hours of discovering such information, and sooner if possible, to ensure the safe and appropriate placement of the child;

(3) Notifies the Secretary and, in consultation with the Secretary, informs the Central Authority of the child's country of origin of the disruption of the placement, within 24 hours of discovering such information. In the event that a visa interview is scheduled within the 24 hour notification period, or has already taken place, the agency or person notifies the Secretary immediately; and

(4) If authorized to place the child with a new family, ensures any new placement includes information about the disruption and its consequences and the existence of any sibling relationships.

(h) The agency or person acts promptly and in accordance with any applicable legal requirements to remove the child when the placement may no longer be in the child's best interests, to provide temporary care, to find an eventual adoptive placement for the child, and, in consultation with the Secretary, to inform the Central Authority of the child's country of origin about any new prospective adoptive parent(s).

(1) In all cases where removal of a child from a placement is considered, the agency or person considers the child's views when appropriate in light of the child's age and maturity and, when required by foreign or State law, obtains the consent of the child prior to removal.

(2) With respect to a child placed for adoption in the United States, the agency or person does not transfer, or advise or facilitate the transfer of, the child from the United States to the country of origin unless it has informed the Secretary and, in consultation with the Secretary, has informed the Central Authority of the country of origin, and the Secretary and the Central Authority have approved the return in writing.

(i) The agency or person includes in the adoption services contract with the prospective adoptive parent(s) a plan

describing the agency's or person's responsibilities if a placement for adoption is disrupted. This plan addresses:

(1) Who will have legal and financial responsibility for transfer of custody in an emergency or in the case of impending disruption and for the care of the child;

(2) If the disruption takes place after the child has arrived in the United States, under what circumstances the child will, as a last resort, be returned to the child's country of origin, if that is determined to be in the child's best interests;

(3) How the child's wishes, age, length of time in the United States, and other pertinent factors will be taken into account; and

(4) How the Central Authority of the child's country of origin and the Secretary will be notified.

(j) The agency or person provides post-placement reports until final adoption of a child to the foreign country when required by the foreign country. Where such reports are required, the agency or person:

(1) Informs the prospective adoptive parent(s) in the adoption services contract of the requirement prior to the referral of the child for adoption;

(2) Informs the prospective adoptive parent(s) that they will be required to provide all necessary information for the report(s); and

(3) Discloses who will prepare the reports and the fees that will be charged.

(k) The agency or person takes steps to:

(1) Ensure that an order declaring the adoption as final is sought by the prospective adoptive parent(s), and in Convention adoptions is entered in compliance with section 301(c) of the IAA (42 U.S.C. 14931(c)); and

(2) Notify the Secretary of the finalization of the adoption within 30 days of the entry of the order.

#### **§ 96.51 Post-adoption services in incoming cases.**

(a) The agency or person takes all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances, with properly trained and qualified escorts, if used, and, if possible, in the company of the adoptive parent(s).

(b) The agency or person informs the prospective adoptive parent(s) whether post-adoption services, including any post-adoption reporting, are included in the agency's or person's fees, and if not, enumerates the cost the agency or person would charge for such services. The agency or person also informs the prospective adoptive parent(s) in the

adoption services contract whether it will provide services if an adoption is dissolved, and, if it indicates it will, it provides a plan describing the agency's or person's responsibilities or if it will not, provides information about local, State, and other entities that may be consulted for assistance in the event an adoption is dissolved.

(c) When post-adoption reports are required by the child's country of origin, the agency or person includes a requirement for such reports in the adoption services contract and makes good-faith efforts to encourage adoptive parents to provide such reports.

(d) The agency or person does not return from the United States an adopted child whose adoption has been dissolved unless the Central Authority of the country of origin and the Secretary have approved the return in writing.

**§ 96.52 Performance of communication and coordination functions in incoming cases.**

(a)(1) The agency or person keeps the Central Authority of the foreign country and the Secretary informed when developments or new information become known that relate to material facts about:

- (i) The child or case;
- (ii) The suitability or conduct of its supervised providers;
- (iii) The suitability and eligibility of adoptive parents; or
- (iv) Any indications that the placement may not be in the best interests of the child, as well as about the progress of the placement if a probationary period is required.

(2) In the case of information developed or new information relating to the suitability and eligibility of adoptive parents, inform USCIS, the sole authority for making suitability determinations.

(b) The agency or person takes all appropriate measures, consistent with the procedures of the U.S. Central Authority and of the foreign country, to:

- (1) Transmit on a timely basis the home study, including any updates and amendments, to the Central Authority or other competent authority of the child's country of origin;
- (2) Obtain the child background study, proof that the necessary consents to the child's adoption have been obtained, and the necessary determination that the prospective placement is in the child's best interests, from the Central Authority or other competent authority in the child's country of origin;
- (3) Provide confirmation that the prospective adoptive parent(s) agree to

the adoption to the Central Authority or other competent authority in the child's country of origin; and

(4) Transmit the determination that the child is or will be authorized to enter and reside permanently in the United States to the Central Authority or other competent authority in the child's country of origin, or confirm that this information has been transmitted to the foreign country's Central Authority or other competent authority by the U.S. Central Authority.

(c) The agency or person takes all necessary and appropriate measures, consistent with the procedures of the foreign country, to obtain permission for the child to leave his or her country of origin and to enter and reside permanently in the United States.

(d) When transfer of the child does not take place, or when requested by the Secretary or a foreign Central Authority, the agency or person returns the original home study on the prospective adoptive parent(s) and/or the original child background study to the authorities that forwarded them.

(e) The agency or person takes all necessary and appropriate measures to perform any tasks in an intercountry adoption case that the Secretary has identified, consistent with this part, as required to comply with the Convention, the IAA, the UAA, or any regulations implementing the IAA and the UAA.

**Standards for Convention Cases in Which a Child Is Emigrating From the United States (Outgoing Cases)**

**§ 96.53 Background studies on the child and consents in outgoing Convention cases.**

(a) The agency or person takes all appropriate measures to ensure that a child background study is performed that includes information about the child's identity, adoptability, background, social environment, family history, medical history (including that of the child's family), and any special needs of the child. The child background study must include the following:

- (1) Information that demonstrates that consents were obtained in accordance with paragraph (c) of this section;
  - (2) Information that demonstrates consideration of the child's wishes and opinions in accordance with paragraph (d) of this section; and
  - (3) Information that confirms that the child background study was prepared either by an exempted provider or by an individual who meets the requirements set forth in § 96.37(g).
- (b) Where the child background study is not prepared in the first instance by

an accredited agency, the agency or person ensures that the child background study is reviewed and approved in writing by an accredited agency. The written approval must include a determination that the background study includes all the information required by paragraph (a) of this section.

(c) The agency or person takes all appropriate measures to ensure that consents have been obtained as follows:

- (1) The persons, institutions, and authorities whose consent is necessary for adoption have been counseled as necessary and duly informed of the effects of their consent, in particular, whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin;
- (2) All such persons, institutions, and authorities have given their consents;
- (3) The consents have been expressed or evidenced in writing in the required legal form, have been given freely, were not induced by payments or compensation of any kind, and have not been withdrawn;
- (4) The consent of the mother, where required, was executed after the birth of the child;
- (5) The child, as appropriate in light of his or her age and maturity, has been counseled and duly informed of the effects of the adoption and of his or her consent to the adoption; and
- (6) The child's consent, where required, has been given freely, in the required legal form, and expressed or evidenced in writing and not induced by payment or compensation of any kind.

(d) If the child is 12 years of age or older, or as otherwise provided by State law, the agency or person gives due consideration to the child's wishes or opinions before determining that an intercountry placement is in the child's best interests.

(e) The agency or person prior to the child's adoption takes all appropriate measures to transmit to the Central Authority or other competent authority or accredited bodies of the Convention country the child background study, proof that the necessary consents have been obtained, and the reasons for its determination that the placement is in the child's best interests. In doing so, the agency or person, as required by Article 16(2) of the Convention, does not reveal the identity of the mother or the father if these identities may not be disclosed under State law.



**§ 96.54 Placement standards in outgoing Convention cases.**

(a) The agency or person makes reasonable efforts to find a timely adoptive placement for the child in the United States by:

(1) Disseminating information on the child and the child's availability for adoption through print, media, and internet resources, including resources designed to communicate with potential prospective adoptive parents throughout the United States;

(2) Listing information about the child on a national or State adoption exchange or registry for at least 60 calendar days after the birth of the child;

(3) Responding to all inquiries about adoption of the child; and

(4) Providing a copy of the child background study to potential U.S. prospective adoptive parents.

(b) The agency or person documents all efforts to comply with paragraph (a) of this section.

(c) If the child is not placed for adoption in the United States, the agency or person demonstrates to the satisfaction of the State court with jurisdiction over the adoption that reasonable efforts to find a timely and qualified adoptive placement for the child in the United States were made.

(d) In placing the child for adoption, the agency or person:

(1) To the extent consistent with State law, the Convention, the IAA, and these regulations, makes diligent efforts to place siblings together for adoption and, where placement together is not possible, to arrange for contact between separated siblings, unless it is in the best interests of one of the siblings that such efforts or contact not take place; and

(2) Complies with all applicable requirements of the Indian Child Welfare Act, 25 U.S.C. 1901 *et seq.*

(e) The agency or person complies with any State law requirements pertaining to the provision and payment of independent legal counsel for birth parents. If State law requires full disclosure to the birth parent(s) that the child is to be adopted by a parent or parents residing outside the United States, the agency or person provides such disclosure.

(f) The agency or person takes all appropriate measures to give due consideration to the child's upbringing and to his or her ethnic, religious, and cultural background.

(g) When particular prospective adoptive parent(s) in a Convention country have been identified, the agency or person takes all appropriate measures to determine whether the envisaged

placement is in the best interests of the child, on the basis of the child background study and the home study on the prospective adoptive parent(s).

(h) The agency or person thoroughly prepares the child for the transition to the Convention country, using age-appropriate services that address the child's likely feelings of separation, grief, and loss and difficulties in making any cultural, religious, racial, ethnic, or linguistic adjustment.

(i) The agency or person takes all appropriate measures to ensure that the transfer of the child takes place in secure and appropriate circumstances, with properly trained and qualified escorts, if used, and, if possible, in the company of the adoptive parent(s) or the prospective adoptive parent(s);

(j) Before the placement for adoption proceeds, the agency or person identifies the entity in the receiving country that will provide post-placement supervision and reports, if required by State law, and ensures that the child's adoption record contains the information necessary for contacting that entity.

(k) The agency or person ensures that the child's adoption record includes the order granting the adoption or legal custody for the purpose of adoption in the Convention country.

(l) The agency or person consults with the Secretary before arranging for the return to the United States of any child who has emigrated to a Convention country in connection with the child's adoption.

**§ 96.55 Performance of Convention communication and coordination functions in outgoing Convention cases.**

(a) The agency or person keeps the Central Authority of the Convention country and the Secretary informed as necessary about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

(b) The agency or person ensures that:

(1) Copies of all documents from the State court proceedings, including the order granting the adoption or legal custody, are provided to the Secretary;

(2) Any additional information on the adoption is transmitted to the Secretary promptly upon request; and

(3) It otherwise facilitates, as requested, the Secretary's ability to provide the certification that the child has been adopted or that custody has been granted for the purpose of adoption, in accordance with the Convention and the IAA.

(c) When transfer of the child does not take place, or when requested by the

Secretary or a foreign Central Authority, the agency or person returns the original home study on the prospective adoptive parent(s) and/or the original child background study to the authorities that forwarded them.

(d) The agency or person provides to the State court with jurisdiction over the adoption:

(1) Proof that consents have been given as required in § 96.53(c);

(2) A copy in English or certified English translation of the home study on the prospective adoptive parent(s) in the Convention country, and the determination by the agency or person that the placement with the prospective adoptive parent(s) is in the child's best interests;

(3) Evidence that the prospective adoptive parent(s) in the Convention country agree to the adoption;

(4) Evidence that the child will be authorized to enter and reside permanently in the Convention country or on the same basis as that of the prospective adoptive parent(s); and

(5) Evidence that the Central Authority of the Convention country has agreed to the adoption, if such consent is necessary under its laws for the adoption to become final.

(e) The agency or person makes the showing required by § 96.54(c) to the State court with jurisdiction over the adoption.

(f) The agency or person takes all necessary and appropriate measures to perform any tasks in a Convention adoption case that the Secretary has identified, consistent with this Part, as required to comply with the Convention, the IAA, or any regulations implementing the IAA.

**§ 96.56 [Reserved]**

■ 7. Revise subpart L to read as follows:

**Subpart L—Oversight of Accredited Agencies and Approved Persons by the Secretary**

Sec.

96.81 Scope.

96.82 The Secretary's response to actions by the accrediting entity.

96.83 Suspension or cancellation of accreditation or approval by the Secretary.

96.84 Reinstatement of accreditation or approval after suspension or cancellation by the Secretary.

96.85 Temporary and permanent debarment by the Secretary.

96.86 Length of debarment period and reapplication after temporary debarment.

96.87 Responsibilities of the accredited agency, approved person, and accrediting entity following suspension, cancellation, or debarment by the Secretary.

96.88 Procedures for debarment with prior notice.

96.89 Procedures for debarment effective immediately.

96.90 Review of suspension, cancellation, or debarment by the Secretary.

### **Subpart L—Oversight of Accredited Agencies and Approved Persons by the Secretary**

#### **§ 96.81 Scope.**

The provisions in this subpart establish the procedures governing adverse action by the Secretary against accredited agencies and approved persons.

#### **§ 96.82 The Secretary's response to actions by the accrediting entity.**

(a) There is no administrative review by the Secretary of an accrediting entity's decision to deny accreditation or approval, nor of any decision by an accrediting entity to take an adverse action.

(b) When informed by an accrediting entity that an agency has been accredited or a person has been approved, the Secretary will take appropriate steps to ensure that relevant information about the accredited agency or approved person is provided to the Permanent Bureau of the Hague Conference on Private International Law. When informed by an accrediting entity that it has taken an adverse action that impacts an agency's or person's accreditation or approval status, the Secretary will take appropriate steps to inform the Permanent Bureau of the Hague Conference on Private International Law.

#### **§ 96.83 Suspension or cancellation of accreditation or approval by the Secretary.**

(a) The Secretary must suspend or cancel the accreditation or approval granted by an accrediting entity when the Secretary finds, in the Secretary's discretion, that the agency or person is substantially out of compliance with the standards in subpart F of this part and that the accrediting entity has failed or refused, after consultation with the Secretary, to take appropriate enforcement action.

(b) The agency or person shall be provided with written notice of cancellation or suspension by the Secretary, which shall include:

(1) The reasons for the suspension or cancellation in terms sufficient to put the agency or person on notice of the conduct or transaction(s) upon which it is based;

(2) The standards in subpart F of this part with which the agency or person is out of compliance;

(3) The effect of the suspension or cancellation, including the agency's or person's responsibility to cease

providing adoption services and, if applicable, its responsibilities with respect to the transfer of cases and the return of fees.

(4) The Department will also provide the agency or person copies of any evidence relied on by the Department in support of the suspension or cancellation.

(c) If the Secretary suspends or cancels the accreditation or approval of an agency or person, the Secretary will take appropriate steps to notify the accrediting entity(ies), USCIS, the Permanent Bureau of the Hague Conference on Private International Law, State licensing authorities, the Central authorities in the countries where the agency or person operates, and other authorities as appropriate.

#### **§ 96.84 Reinstatement of accreditation or approval after suspension or cancellation by the Secretary.**

(a) An agency or person who has been the subject of a suspension or cancellation by the Secretary may, within 20 days after receipt of the notice of suspension or cancellation, submit a written statement including any reasons why it believes the adverse action is unwarranted. Such statement must include any supporting materials that the agency or person wishes to be considered in support of its submission. If the agency or person does not submit such a statement within 30 days, the Department's decision will become final.

(b) Upon review and consideration of the agency or person's submission and the evidence relied on by the Department, the Secretary shall determine whether or not to withdraw the cancellation or suspension. The Secretary shall withdraw the suspension or cancellation if he or she finds that the determination that the agency or person is substantially out of compliance with applicable requirements is not supported by substantial evidence. The agency or person will be notified of this decision within 30 days of the Department's receipt of the written statement described in paragraph (a) of this section. If the Secretary withdraws a suspension or cancellation under this paragraph, the Secretary will also take appropriate steps to notify the entities referenced in § 96.83(c).

(c) An agency or person may petition the Secretary for relief from the Secretary's suspension or cancellation of its accreditation or approval on the grounds that the deficiencies necessitating the suspension or cancellation have been corrected. If the Secretary is satisfied that the deficiencies that led to the suspension

or cancellation have been corrected, the Secretary shall, in the case of a suspension, terminate the suspension or, in the case of a cancellation, notify the agency or person that it may reapply for accreditation or approval to the same accrediting entity that handled its prior application for accreditation or approval. If that accrediting entity is no longer providing accreditation or approval services, the agency or person may reapply to any accrediting entity with jurisdiction over its application. If the Secretary terminates a suspension or permits an agency or person to reapply for accreditation or approval, the Secretary will so notify the appropriate accrediting entity. If the Secretary terminates a suspension, the Secretary will also take appropriate steps to notify the entities referenced in § 96.83(c).

(d) Nothing in this section shall be construed to prevent the Secretary from withdrawing a cancellation or suspension if the Secretary concludes that the action was based on a mistake of fact or was otherwise in error. Upon taking such action, the Secretary will take appropriate steps to notify the accrediting entity(ies) and the entities referenced in § 96.83(c).

#### **§ 96.85 Temporary and permanent debarment by the Secretary.**

(a) The Secretary may temporarily or permanently debar an agency from accreditation or a person from approval on the Secretary's own initiative, at the request of DHS, or at the request of an accrediting entity. An agency or person that is debarred pursuant to this section ceases to be accredited or approved.

(b) The Secretary may issue a debarment order only if the Secretary, in the Secretary's discretion, determines that:

(1) There is substantial evidence that the agency or person is out of compliance with the standards in subpart F of this part; and

(2) There has been a pattern of serious, willful, or grossly negligent failures to comply with the standards in subpart F of this part, or there are other aggravating circumstances indicating that continued accreditation or approval would not be in the best interests of the children and families concerned. For purposes of this paragraph:

(i) "The children and families concerned" include any children and any families whose interests have been or may be affected by the agency's or person's actions.

(ii) In determining whether the agency's or person's continued accreditation or approval would not be in the best interests of the children and families concerned, the Secretary may

consider whether the agency's or person's continued accreditation would be detrimental to the ability of U.S. citizens to adopt children through intercountry adoption in the future.

(3) A failure to comply with § 96.47 (home study requirements) shall constitute a "serious failure to comply" unless it is shown by clear and convincing evidence that such noncompliance had neither the purpose nor the effect of determining the outcome of a decision or proceeding by a court or other competent authority in the United States or the child's country of origin; and

(i) Repeated serious, willful, or grossly negligent failures to comply with § 96.47 (home study requirements) by an agency or person after consultation between the Secretary and the accrediting entity with respect to previous noncompliance by such agency or person shall constitute a pattern of serious, willful, or grossly negligent failures to comply.

(ii) [Reserved].

(c) The Secretary shall initiate a debarment proceeding by notice of proposed debarment, in accordance with the procedures in § 96.88, unless the Secretary finds that it is necessary that debarment be effective immediately because the agency's or person's continued accreditation would pose a substantial risk of significant harm to children or families. If the Secretary finds that it is necessary that debarment be effective immediately, the procedures in § 96.89 shall govern such debarment.

**§ 96.86 Length of debarment period and reapplication after temporary debarment.**

(a) In the case of a temporary debarment order, the order will take effect on the date specified in the order and will specify a date, not earlier than three years later, on or after which the agency or person may petition the Secretary for withdrawal of the temporary debarment. If the Secretary withdraws the temporary debarment, the agency or person may then reapply for accreditation or approval to the same accrediting entity that handled its prior application for accreditation or approval. If that accrediting entity is no longer providing accreditation or approval services, the agency or person may apply to any accrediting entity with jurisdiction over its application.

(b) In the case of a permanent debarment order, the order will take effect on the date specified in the order. The agency or person will not be permitted to apply again to an accrediting entity for accreditation or approval, or to the Secretary for termination of the debarment.

(c) Nothing in this section shall be construed to prevent the Secretary from withdrawing a debarment if the Secretary concludes that the action was based on a mistake of fact or was otherwise in error. Upon taking such action, the Secretary will take appropriate steps to notify the accrediting entity(ies) and the entities referenced in § 96.83(c).

**§ 96.87 Responsibilities of the accredited agency, approved person, and accrediting entity following suspension, cancellation, or debarment by the Secretary.**

If the Secretary suspends or cancels the accreditation or approval of an agency or person, or debarms an agency or person, the agency or person must cease to provide adoption services in all intercountry adoption cases. In the case of suspension, the agency or person must consult with the accrediting entity about whether to transfer its intercountry adoption cases and adoption records. In the case of cancellation or debarment, the agency or person must execute the plans required by §§ 96.33(f) and 96.42(d) under the oversight of the accrediting entity, and transfer its intercountry adoption cases and adoption records to other accredited agencies or approved persons or, where required by State law, to the State repository for such records.

(a) When the agency or person does not transfer such intercountry adoption cases or adoption records in accordance with the plans 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.

(b) If the Secretary cancels the accreditation or approval of an agency or person, or debarms an agency or person, the accrediting entity shall refuse to renew any pending applications for renewal of accreditation or approval.

**§ 96.88 Procedures for debarment with prior notice.**

Unless the Secretary finds that it is necessary that debarment be effective immediately because the agency's or person's continued accreditation would risk significant harm to children or families, an agency or person shall be provided with notice of the proposed debarment and an opportunity to contest the proposed debarment, in

accordance with the provisions of this section:

(a) A debarment proceeding shall be initiated by notice from the Department to the agency or person that includes:

(1) A statement that debarment is being considered under § 96.85;

(2) The reasons for the proposed debarment in terms sufficient to put the agency or person on notice of the conduct or transaction(s) upon which it is based;

(3) The standards in subpart F of this part with which the Secretary believes the agency or person is out of compliance;

(4) The provisions of this section and any other procedures, if applicable, governing the debarment proceedings, including specifically the right to request a hearing, when applicable; and

(5) The potential effect of a debarment, including the agency's or person's responsibilities with respect to ceasing to provide adoption services, transferring cases, and returning fees.

(b) If the agency or person elects to contest the proposed debarment, it may do so in accordance with the following procedures:

(1) Within 45 days after receipt of the notice of proposed debarment, the agency or person may submit a written statement in opposition to the proposed debarment. Such statement may include any evidence on which the agency or person intends to rely in opposition to the proposed debarment. Such statement may also include a request for a hearing. If a request for a hearing is not included with agency or person's statement, no hearing will be held, and the Secretary's debarment decision will be based upon his or her review of the written record only.

(2) Within 45 days after its receipt of the agency's or person's written statement, the Department will give the agency or person copies of the evidence relied on in support of the debarment action. In addition, the Department may choose to provide a written statement in response to the agency's or person's submission.

(3) If a hearing was not timely requested in accordance with paragraph (b)(1) of this section, then the agency or person may, within 45 days of its receipt of the Department's response described in paragraph (b)(2) of this section, submit a further statement in reply, which may, if appropriate, include additional evidence.

(4) If a hearing was requested in accordance with paragraph (b)(1) of this section, then the agency or person will, within 30 days of its receipt of the Department's response described in paragraph (b)(2) of this section, produce

to the Department all physical or documentary evidence on which it will rely at the hearing.

(5) The statements described in this paragraph, and any evidence submitted therewith, will be made part of the record of the proceeding, and if no hearing was timely requested, will constitute the entire record of the proceeding.

(c) If a hearing was timely requested in accordance with paragraph (b)(1) of this section, the Department will, within 60 days of its receipt of the written statement described in paragraph (b)(1) of this section, give the agency or person written notice of the date, time, and place of the hearing. The proposed date of the hearing must be at least 30 days after the agency or person has received the evidence described in paragraph (b)(2) of this section, and at least 30 days after the agency or person has received the written notice described in this paragraph. The Department will make reasonable efforts to hold the hearing within 120 days of the date the Department receives the agency's or person's written request.

(1) 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 proceeding to the Secretary.

(2) The hearing shall take place in Washington, DC. The agency or person may appear in person (if an individual), or be represented by an organizational representative (if an agency), or with or through an attorney admitted to practice in any State of the United States, the District of Columbia, or any territory or possession of the United States. The agency or person is responsible for all costs associated with attending the hearing.

(3) There is no right to subpoena witnesses or to conduct discovery in connection with the hearing. However, the agency or person may testify in person, offer evidence on its own behalf, present witnesses, and make arguments at the hearing. The agency or person is responsible for all costs associated with the presentation of its case. The Department may present witnesses, offer evidence, and make arguments on its behalf. The Department is responsible for all costs associated with the presentation of its case.

(4) Any evidence not produced in accordance with paragraph (b) of this section will not be considered by the

hearing officer or be made part of the record of the proceeding, unless the hearing officer, in his or her discretion, elects to accept it. The hearing officer shall state his or her reasons for accepting evidence under this subparagraph. The hearing officer shall not accept under this subparagraph any evidence offered by a party that could have been produced by that party in accordance with paragraph (b) of this section.

(5) 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 agency or person and made a part of the record of the proceeding.

(6) If any witness is unable to appear, the hearing officer may, in his or her discretion, permit the witness to testify via teleconference or 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.

(7) A qualified reporter will make a complete verbatim transcript of the hearing. The agency or person 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 be made part of the record of the proceeding. The hearing officer's preliminary findings and recommendations are deliberative and shall not be considered part of the record unless adopted by the Secretary.

(d) Upon review and consideration of the complete record of the proceeding and the preliminary findings of fact and recommendations of the hearing officer, if applicable, the Secretary shall determine whether or not to impose the debarment. The Secretary shall render his or her decision within a reasonable period of time after the date for submission of the agency's or person's reply statement described in paragraph (b)(3) of this section, if no hearing was requested; or after the close of the hearing described in paragraph (c) of this section, if a hearing was held.

(1) The standard of proof applicable to a debarment proceeding under this subpart is substantial evidence. The Department bears the burden to establish that substantial evidence exists:

(i) That the agency or person is out of compliance with some or all of the standards identified in the notice of proposed debarment; and

(ii) That there is either a pattern of serious, willful, or grossly negligent failures to comply, or other aggravating circumstances indicating that continued accreditation or approval would not be in the best interests of the children and families concerned.

(2) The Secretary is not limited to the specific conduct or transactions identified in the notice of proposed debarment, but may consider any evidence in the record of the proceeding that supplies substantial evidence of a violation of the standards identified in the notice of proposed debarment.

(e) If the Secretary decides to impose debarment, the agency or person shall be given prompt notice:

(1) Referring to the notice of proposed debarment;

(2) Specifying the reasons for debarment;

(3) Stating the effect of debarment, including the debarred agency's or person's responsibilities with respect to ceasing to provide adoption services, transferring cases, and returning fees; and

(4) Stating the period of debarment, including effective dates.

(f) The decision of the Secretary is final and is not subject to further administrative review.

(g) If the Secretary decides not to impose debarment, the agency or person shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to any adverse action imposed, or that may be imposed, on the agency or person by an accrediting entity.

**§ 96.89 Procedures for debarment effective immediately.**

If the Secretary finds that the agency's or person's continued accreditation would risk significant harm to children or families, and that debarment should be effective immediately, the Secretary shall debar the agency or person from accreditation by providing written notice of debarment to the agency or person.

(a) The notice of debarment shall include:

(1) A statement that the agency or person is debarred in accordance with § 96.85;

(2) The reasons for the debarment in terms sufficient to put the agency or person on notice of the conduct or transaction(s) upon which it is based;

(3) The standards in subpart F of this part with which the Secretary believes the agency or person is out of compliance;

(4) The period of the debarment, including effective dates;

(5) The effect of the debarment, including the debarred agency's or person's obligations; and

(6) The provisions of this section and any other procedures, if applicable, governing proceedings to contest the debarment action, including specifically the right to request a hearing, when applicable.

(b) If the agency or person elects to contest the Department's debarment action, it may do so in accordance with the following procedures:

(1) Within 30 days after receipt of the notice of debarment, the debarred agency or person may submit a written statement in opposition to the debarment. Such statement may include any evidence on which the debarred agency or person intends to rely in opposition to the debarment. Such statement may also include a request for a hearing. If a request for hearing is not included with the agency or person's statement, no hearing will be held, and the Secretary's debarment decision will be based upon his or her review of the written record only.

(2) Within 30 days after its receipt of the agency's or person's written statement, the Department will give the debarred agency or person copies of the evidence relied on in support of the debarment action. In addition, the Department may choose to provide a written statement in response to the debarred agency's or person's submission.

(3) The debarred agency or person may, within 30 days of its receipt of the Department's response described in paragraph (b)(2) of this section, submit a further statement in reply. The debarred agency or person will include with its reply, or will produce to the Department if it elects not to submit a reply, any additional physical or documentary evidence on which it will rely at the hearing.

(4) The statements described in this paragraph, and any evidence submitted therewith, will be made part of the

record of the proceeding, and if no hearing was timely requested, will constitute the entire record of the proceeding.

(c) If a hearing was timely requested in accordance with paragraph (b)(1) of this section, the provisions of § 96.88(c) shall apply, except that the Department will give notice of the date, time, and place of the hearing within 30 days of its receipt of the debarred agency's or person's written statement described in paragraph (b)(1) of this section, and will make reasonable efforts to hold the hearing within 90 days of such receipt.

(d) Upon review and consideration of the complete record of the proceeding and the preliminary findings of fact and recommendations of the hearing officer, the Secretary shall confirm the debarment, if he or she determines that it is supported by substantial evidence, or shall withdraw the debarment, if he or she determines that it is not supported by substantial evidence. The Secretary shall render his or her decision within 30 days of the date for submission of the debarred agency's or person's reply statement described in paragraph (b)(3) of this section, if no hearing was requested; or within 45 days of the close of the hearing, if a hearing was held.

(1) The Department bears the burden to establish that substantial evidence exists:

(i) That the debarred agency or person is out of compliance with some or all of the standards identified in the notice of debarment; and

(ii) That there is either a pattern of serious, willful, or grossly negligent failures to comply, or other aggravating circumstances indicating that continued accreditation or approval would not be in the best interests of the children and families concerned.

(2) The Secretary is not limited to the specific conduct or transactions identified in the notice of debarment, but may consider any evidence in the record of the proceeding that supplies substantial evidence of a violation of the standards identified in the notice of debarment.

(3) If the Secretary decides to confirm the debarment, the agency or person shall be given prompt notice:

(i) Referring to the notice of debarment;

(ii) Stating that the debarment is confirmed;

(iii) Specifying the reasons for the decision to confirm the debarment; and

(iv) Stating the period, including effective dates, of the debarment, if different from those set forth in the notice of debarment.

(e) The decision of the Secretary is final and is not subject to further administrative review.

(f) If the Secretary decides to withdraw the debarment, the agency or person shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to any adverse action imposed, or that may be imposed, on the agency or person by an accrediting entity.

#### **§ 96.90 Review of suspension, cancellation, or debarment by the Secretary.**

(a) Except to the extent provided by the procedures in §§ 96.84, 96.88, and 96.89, an adverse action by the Secretary shall not be subject to administrative review.

(b) Section 204(d) of the IAA (42 U.S.C. 14924(d)) provides for judicial review of final actions by the Secretary. When any petition brought under section 204(d) raises as an issue whether the deficiencies necessitating a suspension or cancellation of accreditation or approval have been corrected, procedures maintained by the Secretary pursuant to § 96.84(b) must first be exhausted. A suspension or cancellation of accreditation or approval and a debarment (whether temporary or permanent) by the Secretary are final actions subject to judicial review. Other actions by the Secretary are not final actions and are not subject to judicial review.

(c) In accordance with section 204(d) of the IAA (42 U.S.C. 14924(d)), an agency or person that has been suspended, cancelled, or temporarily or permanently debarred 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 person resides or the agency is located, pursuant to 5 U.S.C. 706, to set aside the action.

■ 8. Revise subpart M to read as follows:

#### **Subpart M—Dissemination and Reporting of Information by Accrediting Entities**

Sec.

96.91 Scope.

96.92 Dissemination of information to the public about accreditation and approval status.

96.93 Dissemination of information to the public about complaints against accredited agencies and approved persons.

96.94 Reports to the Secretary about accredited agencies and approved persons and their activities.

96.95–96.99 [Reserved].

### Subpart M—Dissemination and Reporting of Information by Accrediting Entities

#### § 96.91 Scope.

The provisions in this subpart govern the dissemination and reporting of information on accredited agencies and approved persons by accrediting entities.

#### § 96.92 Dissemination of information to the public about accreditation and approval status.

(a) Each accrediting entity must maintain and make available to the public at least monthly the following information:

(1) The name, address, and contact information for each agency and person that has been accredited or approved;

(2) The names of agencies and persons that have been denied accreditation or approval that have not subsequently been accredited or approved;

(3) The names of agencies and persons that have been subject to suspension, cancellation, refusal to renew accreditation or approval, or debarment by an accrediting entity or the Secretary;

(4) Other information specifically authorized in writing by the accredited agency or approved person to be disclosed to the public;

(5) Confirmation of whether or not a specific agency or person has a pending application for accreditation or approval, and, if so, the date of the application and whether it is under active consideration or whether a decision on the application has been deferred; and

(6) If an agency or person has been subject to suspension, cancellation, refusal to renew accreditation or approval, or debarment, a brief statement of the reasons for the action, including, where relevant, the identity and conduct of any foreign supervised providers.

(b) [Reserved]

#### § 96.93 Dissemination of information to the public about complaints against accredited agencies and approved persons.

Each accrediting entity must maintain a written record documenting each complaint received and the steps taken in response to it. This information may be disclosed to the public as follows:

(a) Each accrediting entity must confirm, upon inquiry from a member of the public, whether there have been any substantiated complaints against an accredited agency or approved person, and if so, provide information about the status and nature of any such complaints.

(b) Each accrediting entity must have procedures for disclosing information about complaints that are substantiated.

#### § 96.94 Reports to the Secretary about accredited agencies and approved persons and their activities.

(a) Each accrediting entity must make annual reports to the Secretary on the information it collects from accredited agencies and approved persons pursuant to § 96.43. Each accrediting entity must make semi-annual reports to the Secretary that summarize for the preceding six-month period the following information:

(1) The accreditation and approval status of its applicants, accredited agencies, and approved persons;

(2) Any instances where it has denied accreditation or approval;

(3) Any adverse actions it has taken against an accredited agency or approved person;

(4) All substantiated complaints against its accredited agencies and approved persons and the impact of such complaints on their accreditation or approval status;

(5) The number, nature, and outcome of complaint reviews carried out by the accrediting entity as well as the shortest, longest, average, and median length of time expended to complete complaint reviews;

(6) Any discernible patterns in complaints it has received about specific agencies or persons, as well as any discernible patterns of complaints in the aggregate;

(7) A list of cases involving disruption, dissolution, unregulated custody transfer, and serious harm to the child, by agency or person and by country or origin, and any discernible patterns in these cases; and

(8) A summary of unsubstantiated complaints, and those which the accrediting entity declined to review.

(b) In addition to the reporting requirements contained in § 96.72, an accrediting entity must immediately notify the Secretary in writing:

(1) When it learns an accredited agency or approved person has:

(i) Ceased to provide adoption services;

(ii) Transferred its intercountry adoption cases and adoption records; or

(iii) Withdrawn a pending application for renewal of accreditation or approval;

(2) When it accredits an agency or approves a person;

(3) When it renews the accreditation or approval of an agency or person; or

(4) When it takes an adverse action against an accredited agency or approved person that impacts its accreditation or approval status.

#### §§ 96.95–96.99 [Reserved].

■ 9. Add reserved subparts N, O, P, and Q.

■ 10. Add subpart R, consisting of §§ 96.100 and 96.1010, to read as follows:

### Subpart R—Alternative Procedures for the Intercountry Adoption of Relatives

#### § 96.100 Alternative procedures for the intercountry adoption of relatives.

In a case where the child is being adopted by a relative as defined in § 96.2:

(a) The primary provider, in accordance with § 96.44, develops and implements a service plan for providing adoption service 3 (performing and reporting on the home study and child background study, according to the provisions in §§ 96.47 and 96.53), adoption service 5 (monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption), and adoption service 6 (when necessary because of a disruption before final adoption, assuming custody and providing child care or any other social service pending an alternative placement, according to the provisions in §§ 96.50 and 96.51); and provides all such services in accordance with § 96.44.

(b) The primary provider includes in the service plan any additional adoption services found in the definition of adoption services in § 96.2 only if they will be provided by the primary provider or one of its supervised providers.

(c) The primary provider verifies that the prospective adoptive parents have met the training requirements outlined in § 96.48 in incoming cases before the finalization of the adoption or the granting of legal custody for purposes of emigration and adoption in the United States. In cases where the adoption or legal custody grant occurred prior to the primary provider's involvement in the case, the primary provider must verify such training requirements have been met as soon as practicable.

(d) The provisions in § 96.54 relating to reasonable efforts to find a timely adoptive placement for the child in the United States do not apply.

(e) All services provided pursuant to this section must be performed in accordance with the Convention, the IAA, the UAA, and the regulations implementing the IAA and the UAA.

#### § 96.101 Applicability date.

The provisions of this subpart are applicable beginning [DATE THREE

MONTHS AFTER EFFECTIVE DATE OF FINAL RULE].

**Carl Risch,**

*Assistant Secretary of State for Consular Affairs, Department of State.*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4710-06-P

<b>Appendix A: Supplementary Information, RIN 1400-AE39 NPRM, Amending 22 CFR part 96.</b>	
<p>This appendix informs Part V, Regulatory Information, <i>Regulatory Flexibility Act/Executive Order 13272: Small Business</i> and in the section on <i>E.O. 12866 providing a possible costing structure for implementing the changes in this NPRM.</i></p> <p>These calculations are summarized in <b>Table 2, Summary of Appendix A.</b></p>	
<b>Info Levels</b>	<b>Appendix A Elements</b>
<b>1.</b>	<b>Preamble Section: II-A-1</b>
<b>1.1</b>	<p><i>Current Rule Provisions:</i></p> <p><b>Adoption by Relatives Subpart R § 96.100</b></p> <p>The Department's accreditation regulations currently do not have standards specifically relating to adoption by relatives in incoming cases. These cases follow the same procedures as all other cases.</p>
<b>1.2</b>	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>The new provisions on the adoption of relatives represent a less burdensome alternative to the existing rule, designed to minimize significant economic impacts on small entities while accomplishing our statutory obligations. It reduces the number of adoption services that ASPs are responsible for as primary providers, and thus minimizes costs to ASPs.</p>
<b>1.3</b>	<p><i>Potential Compliance Cost for Small Firms</i></p> <p>The anticipated impact of this change is an unquantifiable decrease in costs to all ASPs providing services in incoming cases involving relative adoptions.</p>
<b>2</b>	<b>Preamble Section: II-B-1</b>

2.1	<p><i>Current Rule Provisions</i></p> <p><b>Case tracking, data management, and reporting §§ 96.43 and 96.94</b></p> <p>These two sections outline a number of data points to maintain and report to an accrediting entity on an annual basis, including what is to be recorded in the case of disrupted placements and dissolutions.</p>
2.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>The new provisions of §§ 96.43 and 96.94 add additional data points to report in the event of a disruption or dissolution. The additional information allows for better tracking of the welfare of children whose placements disrupt or whose adoptions end in dissolution.</p>
2.3	<p><i>Potential Compliance Cost for Small Firms</i></p> <p>Assumptions in projecting costs of compliance:</p> <p>Of the roughly 30 pieces of new information to report to an AE, the U.S. Central Authority, and foreign authorities, half relate to cases involving disruption and half to cases of dissolution.</p> <p>The number of such cases requiring new reporting is extremely small. In fiscal year 2018 we received information about 4 disruptions of intercountry adoption cases by U.S. ASPs and 72 reports of dissolutions received through Department of Health and Human Services channels. For these reasons, we anticipate that a very small percentage, less than 5% of all small firms, will be required to actually provide the additional reporting and therefore ASPs do not need to put extensive processes and preparations in place, just minimal updates to policies and procedures addressing the reporting requirements, to which the ASP can refer as needed.</p>
2.3.1	<p><b>Updating policies and procedures. Up to five social worker hours @ \$31/hour are needed.</b></p> <p><b>Range: (1 x \$31) to (5 x \$31) = \$31 to \$155</b></p>
2.3.1.1	<p><b>Cost for one firm:</b></p> <p><b>Range: \$31 to \$155</b></p>
2.3.1.2	<p><b>Cost for all firms:</b></p> <p><b>(90 x \$31) to (90 x \$155) =</b></p> <p><b>Range: \$2,790 to \$13,950</b></p>
3	<p><b>Preamble Section: II-C-2</b></p>



3.1	<p><i>Current Rule Provisions</i></p> <p><b>Payments to the birth mother of certain expenses and enhancing financial transparency of funds spent abroad. § 96.36(a) and (b)</b></p> <p>The current regulation in § 96.36(a) and (b) prohibit payment for a child or as an inducement to release a child for adoption.</p>
3.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>Section 96.36(a) has been revised to remove references to expenses that could be paid to birth parents as long as they did not constitute a payment for the child or an inducement to release the child. While such expenses are still possible, removing references to them clarifies that no payments for buying a child or as inducement to release a child are ever allowed. Proposed additions in § 96.36(b) would require an ASP to retain a record of all foreign financial transactions to enhance transparency and provide a means of identifying potential child buying.</p>
3.3	<p><i>Potential Compliance Cost for Small Firms</i></p> <p>Compliance would require a two-step process:</p>
3.3.1	<p>Step 1: Updating policies and procedures. Up to five social worker hours @ \$31/hour are needed.</p> <p><b>Range:</b> (1 x \$31) to (5 x \$31) = \$31 to \$155</p>
3.3.1.1	<p><b>Cost for one firm – Step 1:</b></p> <p><b>Range:</b> \$31 to \$155</p>
3.3.1.2	<p><b>Cost for all firms – Step 1:</b> (90 x \$31) to (90 x \$155) =</p> <p><b>Range:</b> \$2,790 to \$13,950</p>
3.3.2	<p>Step 2: Revision of materials for the public including information on an ASP's website and updating existing staff training to reflect the new record retention requirements. This could be accomplished by:</p>
3.3.2.P1	<p>Part 1: Country program officer/social worker, 2 hours @ \$31/hour per foreign program, from 1 to 10 programs):</p> <p>(1 x (2 x \$31)) to (10 x (2 x \$31)) =</p> <p><b>Range:</b> \$62 to \$620</p>

3.3.2.P2	Part 2: Training and development specialist, 1 hour @ 32/hour per foreign program, up to 10 foreign programs. (1 x \$32) to (10 x \$32) = <b>Range:</b> \$32 to \$320
3.3.2.1	<b>Cost for one firm - Step 2:</b> (\$62 + \$32) to (\$620 + \$320) = <b>Range:</b> \$94 to \$940
3.3.2.2	<b>Cost for all firms - Step 2:</b> (90 x \$94) to (90 x \$940) = <b>Range:</b> \$8,460 to \$84,600
3.3.3	<b>Total cost for one firm: Steps 1 and 2:</b> (\$31 + \$94) to (\$155 + \$940) = <b>Range:</b> \$125 to \$1,095
3.3.4	<b>Total cost for all firms: Steps 1 and 2:</b> (\$14,105 + \$8,460) to (\$14,105 + \$84,600) = <b>Range:</b> \$22,659 to \$99,645
4	<b>Preamble Section: II- C-3</b>
4.1	<i>Current Rule Provisions</i> <b>Prohibition on Child Buying § 96.36(b)</b> The provisions of this section embody one of the prime elements of the Convention, the prohibition on child buying. As currently written, this standard requires the accredited agency or approved person to have policies and procedures in place prohibiting the sale of children and requires that they be incorporated in an ASP's employee training.
4.2	<i>Proposed Changes to the Accreditation Rule</i> Recognizing that the key to monitoring compliance with this standard is transparency regarding how funds are used in an adoption case, the revisions to § 96.36(b) require an ASP's employees, providers, and agents, to retain a record of all payments or fees tendered and the purposes for which they were paid and to provide a copy of them to the agency, as long as required by State law.
4.3	<i>Potential Compliance Cost for Small Firms</i>

4.3.1	<p><b>Step 1. Updating Policies and Procedures:</b> Must take into account a method for keeping track of payments and fees and their purposes as well as providing that information to the ASP. Up to 10 Social Worker Hours @ \$31/hour are needed in the first year only.</p> <p><b>Range:</b> (5 x \$31) to (10 x \$31) = \$155 to \$310</p>
4.3.1.1	<p><b>Year 1 cost for one firm – Step 1:</b></p> <p><b>Range:</b> \$155 to \$310</p>
4.3.1.2	<p><b>Year 1 cost for all firms – Step 1:</b> (90 x \$31) to (90 x \$310) =</p> <p><b>Range:</b> \$2,790 to \$27,900</p>
4.3.2	<p><b>Step 2. Ongoing Tasks:</b> In addition to collecting the information, an ASP needs to analyze the information received for trends of any misuse of funds.</p>
4.3.2.P1	<p>Part 1: Auditor, up to 10 hours @ \$38/hour to develop the scope of information collected and the process of analyzing the information: In first year only.</p> <p><b>Range:</b> (1 x \$38) to (10 x \$38) = \$38 to \$380</p> <p><b>Year 1 Cost to one firm – Step 2, Part 1:</b></p> <p><b>Range: \$38 to \$380</b></p>
4.3.2.P2	<p>Part 2. Financial Clerk to collect the submitted records, analyze them, and archive them. Up to 10 hours per month @ \$21/hour during the initial year and up to 10 hours per month @ \$21/hour in each subsequent year</p> <p><b>Range:</b> (1 x \$21 x 12) to (10 x \$21 x 12) = \$252 to \$2,520</p>
4.3.2.1	<p><b>Year 1 cost for one firm – Step 2, part 2:</b></p> <p>Range: \$252 to \$2,520</p>
4.3.2.2	<p><b>Subsequent years cost to one firm – Step 2, part 2:</b></p> <p>Range: \$252 to \$2,520</p>
4.3.2.3	<p><b>Year 1 cost for one firm – All step 2 parts =</b></p> <p>(\$38 + \$252) to (\$380 + \$2,520) =</p> <p><b>Range:</b> \$290 to \$2900</p>

4.3.2.4	<p><b>Subsequent years cost for one firm – All step 2 parts =</b>  <b>Range:</b> \$252 to \$2,520</p>
4.3.2.5	<p><b>Year 1 cost for all firms – All step 2 parts =</b>  <b>(90 x \$290) to (90 x \$2,900) =</b>  <b>Range:</b> \$26,390 to \$263,900</p>
4.3.2.6	<p><b>Subsequent years cost for all firms – All step 2 parts</b>  <b>(90 x \$252) to (90 x \$2,520) =</b>  <b>Range:</b> \$22,932 to \$229,320</p>
4.3.2.P3	<p>Part 3. Archiving, and retrieving the information is an ongoing cost that ASPs may address in many ways. Using data entry staff to maintain a spreadsheet of data may be the simplest method and is already included in the annual cost for financial clerk services noted above.</p>
4.3.3	<p><b>Total: Steps 1 and 2 costs for one firm =</b>  <b>Year one:</b> (\$155 + \$290) to (\$310 + \$2900) =  <b>Range:</b> \$445 to \$3,210</p>
4.3.4	<p><b>Total: Steps 1 and 2 costs for one firm =</b>  <b>Subsequent years:</b> (\$252 + \$252) to (\$2,520 + \$2,520) =  <b>Range:</b> \$504 to \$5,040</p>
4.3.5	<p><b>Total: Steps 1 and 2 costs for all firms =</b>  <b>Year 1:</b> (90 x \$445) to (90 x \$3,210)  <b>Range:</b> \$40,050 to \$288,900</p>
4.3.6	<p><b>Total: Steps 1 and 2 costs for all firms =</b>  <b>Subsequent years:</b> (90 x \$504) to (90 x \$5,040) =  <b>Range:</b> \$45,360 to \$453,600</p>
5	<p><b>Preamble Section: II- C-4</b></p>

5.1	<p><i>Current Rule Provisions</i></p> <p><b>Compensation § 96.34</b></p> <p>This section establishes the basis on which compensation for work in intercountry adoption may take place and to whom the standard applies. It embodies principles of no incentive or contingent fees for locating or placing children that compensation should only be made for services actually rendered and only on a fee-for-service, hourly wage, or salary basis.</p>
5.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>The amendments to this section extend these compensation provisions to require that an ASP does not compensate or plan to compensate directly or indirectly individuals or entities or agents except as provided in this section.</p>
5.3	<p><i>Potential Compliance Cost for Small Firms</i></p>
5.3.1	<p><b>Updating Policies and Procedures:</b> Must take into account a method for keeping track of payments and fees and their purposes as well as providing that information to the ASP. Up to 10 Social Worker Hours @ \$31/hour are needed.</p> <p><b>Range:</b> (1 x \$31) to (10 x \$31) = \$31 to \$310</p>
5.3.1.1	<p><b>Subtotal: Costs for one firm =</b></p> <p><b>Range:</b> \$31 to \$310</p>
5.3.1.2	<p><b>Subtotal: Costs for all firms =</b> (90 x \$31) to (90 x \$310) =</p> <p><b>Range:</b> \$2,790 to \$27,900</p>
5.3.2	<p><b>Update internal and external training:</b> Training and development specialist (between 10 and 25 hours @ \$32/hour) to update internal training and develop training for foreign supervised providers and others as relevant:</p> <p><b>Range:</b> (10 x \$32) to (25 x \$32) = \$320 TO \$800</p>
5.3.2.1	<p><b>Subtotal: Costs for one firm =</b> \$320 TO \$800</p>
5.3.2.2	<p><b>Subtotal: Costs for all firms =</b></p> <p>(90 x \$320) to (90 x \$800) =</p> <p><b>Range =</b> \$28,800 to \$72,000</p>

5.3.4	<p><b>Total costs for one firm:</b> <math>(\\$31 + \\$320)</math> to <math>(\\$310 + \\$800) =</math>  <b>Range</b> = \$351 to \$1,110</p>
5.3.5	<p><b>Total costs for all firms:</b> <math>(90 \times \\$351)</math> to <math>(90 \times \\$1,110) =</math>  <b>Range:</b> \$31,590 to \$99,000</p>
6	<p><b>Preamble Section: II- C-5</b></p>
6.1	<p><i>Current Rule Provisions</i></p> <p>Fee Disclosures. § 96.40</p> <p>The current fee disclosure provisions in § 96.40 identify nine categories of estimated fees and expenses to include in a fee schedule of the usual costs associated with an intercountry adoption.</p>
6.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>The proposed changes in § 96.40 increase the kind of fee information provided to the public and the frequency and timing with which it is disclosed to the public and PAPs. Fee categories reflect those fees paid for services provided in the United States and those services provided abroad.</p>
6.3	<p><i>Potential Compliance Cost for Small Firms</i></p> <p>The procedures for complying with the general changes to § 96.40 for updating the ASP's fee schedules assume that the recommended steps toward compliance with changes to § 96.40(i) in this appendix at II-C-1 have already been completed and have not been repeated here.</p> <p>The following steps toward compliance with the changes noted above include updating policies and procedures and keeping the schedules updated and contemplate determining the form in which an ASP will provide them to PAPs.</p> <p><b>Updating policies and procedures</b> would require up to 10 social worker hours @ \$31/hour.</p> <p><b>Range:</b> <math>(5 \times \\$31)</math> to <math>(10 \times \\$31) = \\$155</math> to \$310</p>
6.3.1.1	<p><b>Subtotal: Costs for one firm =</b>  <b>Range:</b> \$155 to \$310</p>

6.3.1.2	<p><b>Subtotal: Costs for all firms =</b>  <math>(90 \times \\$155)</math> to <math>(90 \times \\$310) =</math>  <b>Range:</b> \$13,950 to \$27,900</p>
6.3.2	<p>Financial clerk to maintain running updates on fee schedules across various country programs, including surveying PAPs on actual cost experiences in the country of origin will require up to 10 hours per month of financial clerk time @ \$21/hour during the initial year and 10 hours per month of financial clerk time @ \$21/hour in each successive year.  <b>Range:</b> <math>(5 \times \\$21 \times 12)</math> to <math>(10 \times \\$21 \times 12) =</math> \$1,260 to \$2,520</p>
6.3.2.1	<p><b>Subtotal: Year 1 costs for one firm =</b>  <b>Range:</b> \$1,260 to \$2,520</p>
6.3.2.2	<p><b>Subtotal: Subsequent years costs for one firm =</b>  <b>Range:</b> \$1,260 to \$2,520</p>
6.4	<p><b>TOTAL: Year 1 costs for one firm =</b>  <math>(\\$155 + \\$1,260)</math> to <math>(\\$310 + \\$2,520) =</math>  <b>Range:</b> \$1,415 to \$2,830</p>
6.5	<p><b>TOTAL: Subsequent years cost for one firm =</b>  <b>Range:</b> \$1,415 to \$2,830</p>
6.6	<p><b>TOTAL: Cost for all firms =</b>  Year one: <math>(90 \times \\$1,415)</math> to <math>(90 \times 2,830) =</math>  <b>Range:</b> \$127,350 to \$254,700</p>
6.7	<p><b>TOTAL: Subsequent years cost for all firms =</b>  <math>(90 \times \\$252)</math> to <math>(90 \times \\$2,520) =</math>  <b>Range:</b> \$22,680 to \$226,800</p>
7	<p><b>Preamble Section: II- C-6</b></p>

7.1	<p><i>Current Rule Provisions</i></p> <p><b>Payment for care of specific children in the country of origin</b></p> <p><b>§ 96.40(c)(4)</b></p> <p>Section 96.40(c)(4) currently requires disclosure of funds not identified elsewhere that are provided to third parties and for travel and accommodation but contain no requirements that all funds be delivered through an ASP. This allows ASPs to direct PAPs to make payments directly, allowing ASPs to forego oversight of the payments and their potential relationship to child buying provisions, compensation provisions, or reasonableness.</p>
7C.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>The revised § 96.40(c)(4) prohibits ASP involvement in directing or requiring PAPs to make payments for care of specific children in the country of origin. Payment of monthly support fees to ASPs or local providers for the care of children where the intercountry adoption process is not complete can create an incentive to recruit children into institutions, while also providing a disincentive for expeditious processing of an adoption. The proposed change does not prohibit an ASP from providing funds to assist in the care of children in orphanages or from requiring parents to make a general donation to such funds as part of the adoption process. It requires that an ASP, which is better suited to determine if the fees are reasonable and justified, to accept responsibility for such payments, rather than placing the responsibility on PAPs.</p>
7.3	<p><i>Potential Compliance Cost for Small Firms</i></p> <p>The cost of ceasing direct donations by PAPs and providing them through an ASP on a general basis rather than in connection with a particular child may involve updating policies and procedures, revising information provided to the public, and updating existing staff training to reflect new policies and procedures.</p> <p>It will also in some cases require ASP management to review its child welfare support programs and adapt them to conform to these new standards.</p> <p>This would involve: revision of policies and procedures using:</p>
7.3.1	<p>Step 1: 20 hours of social worker staff time @ \$31/hour, to include revising ASP information sheets, website information.</p> <p><b>Range:</b> ( 5 x \$31) to (15 x \$31) = \$155 to \$465</p>



7.3.1.1	<b>Subtotal: Step 1 costs for one firm =</b> <b>Range: \$155 to \$465</b>
7.3.1.2	<b>Subtotal: Step 1 costs for all firms =</b> (90 x \$155) to (90 x \$465) = <b>Range: \$13,950 to \$41,850</b>
7.3.2	Step 2: 10 hour of ASP chief executive time to review the details and direction of the ASP's child welfare support programs, if any @ \$97/hour <b>Range: (1 x \$97) to (10 x \$97) = \$97 to \$970</b>
7.3.2.1	<b>Subtotal: Step 2 costs for one firm =</b> \$97 to \$970
7.3.2.1	<b>Subtotal: Step 2 costs for all firms =</b> (90 x \$97) to (90 x \$970) = <b>Range: \$8,730 to \$87,300</b>
7.3.3	Step 3: 10 hours of training and development staff time @ \$32/hour to integrate training on this subject into internal and external training. <b>Range: (1 x \$32) to (10 x \$32) = \$32 to \$320</b>
7.3.3.1	<b>Subtotal: Step 3 costs for one firm =</b> <b>Range: \$32 to \$320</b>
7.3.3.2	<b>Subtotal: Step 3 costs for all firms =</b> (90 x \$32) to (90 x \$320) = <b>Range: \$2,880 to \$28,800</b>
7.3.4	<b>TOTAL: All steps costs for one firm =</b> (\$155 + \$97 + \$32) to (\$465 + \$970 + \$320) = <b>Range: \$284 to \$1,755</b>
7.3.5	<b>TOTAL: All steps costs for all firms =</b> (90 x \$284) to (90 x \$1,755) = <b>Range: \$25,560 to \$157,950</b>

<b>8</b>	<b>Preamble Section: II- C-7</b>
<b>8.1</b>	<p><i>Current Rule Provisions</i></p> <p><b>Paying Fees Directly to Foreign Supervised Providers</b>  <b>§§ 96.40(c)(6) and 96.46(7) and (8)</b></p> <p>The current rule in § 96.46 permits direct payments to foreign supervised providers at the discretion of the foreign supervised provider.</p>
<b>8.2</b>	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>As amended, the provisions in § 96.40(c)(6) prohibit direct payments by PAPs to foreign supervised providers. All fees are to be billed by and paid to the primary provider in the case, which is responsible for paying foreign supervised providers. This change will reduce PAPs' personal safety risk associated with carrying large sums of cash when visiting the child's country of origin, and provide much enhanced transparency regarding fees paid to foreign supervised providers abroad.</p>
<b>8.3</b>	<i>Potential Compliance Cost for Small Firms</i>
<b>8.3.1</b>	<p><b>Step 1. Updating Policies and Procedures:</b> Must take into account a method for keeping track of payments and fees and their purposes as well as providing that information to an ASP. 10 <u>Social Worker Hours</u> at \$31/hour</p> <p><b>Range:</b> (1 x \$31) to (10 x \$31) = \$31 to \$310</p>
<b>8.3.1.1</b>	<p><b>Subtotal: Step 1 costs for one firm =</b></p> <p><b>Range:</b> \$31 to \$310</p>
<b>8.3.1.2</b>	<p><b>Subtotal: Step 1 costs for all firms =</b></p> <p>(90 x \$31) to (90 x \$310) =</p> <p><b>Range:</b> \$2,790 to \$27,900</p>
<b>8.3.2</b>	<p><b>Step 2. Update internal and external training:</b> Training and development specialist (15 hours @ \$32/hour) to update internal training and develop training for foreign supervised providers and others as relevant:</p> <p><b>Range:</b> (1 x \$32) to (15 x \$32) = \$32 to \$480</p>
<b>8.3.2.1</b>	<p><b>Subtotal: Step 2 costs to one firm =</b></p> <p>\$32 to \$480</p>

8.3.2.2	<p><b>Subtotal: Step 2 costs for all firms =</b>  <math>(90 \times \\$32)</math> to <math>(90 \times \\$480) =</math>  <b>Range: \$2,880 to \$43,200</b></p>
8.3.3	<p><b>TOTAL: Step 1 and Step 2 costs for one firm =</b>  <math>(\\$31 + \\$32)</math> to <math>(\\$310 + \\$480) =</math>  <b>Range: \$63 to \$790</b></p>
8.3.4	<p><b>TOTAL: Step 1 and Step 2 costs for all firms =</b>  <math>(90 \times \\$63)</math> to <math>(90 \times \\$790)</math><b>Range: \$5,670 to \$71,100</b></p>
9	<b>Preamble Section: II- C-8</b>
9.1	<p><i>Current Rule Provisions</i></p> <p><b>Holding Unspent Client Funds Separate from ASP Operating Funds § 96.40(f)</b></p> <p>Section 96.33(e) (now found in § 96.40(f)) requires ASPs to have a plan for reimbursing client funds paid for services not yet rendered, in the event the ASP ceases to provide or is no longer permitted to provide adoption services in intercountry adoption cases. These provisions have been moved to § 96.40(f).</p>
9.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>Amendments to § 96.40(f) require that ASPs segregate client fees collected for services not yet rendered. Segregated funds may not be counted towards the agency's or person's required reserve or other operating funds. At least annually, the agency or person must submit monthly balance sheets for inspection by the accrediting entity to verify segregation of unused client funds. However, the proposed change does not specify a particular method for achieving segregation of funds, and some ASPs already do this.</p>
9.3	<i>Potential Compliance Cost for Small Firms</i>
9.3.1	<p><b>Step A. Cost to adapt financial management practices</b></p> <p>Financial managers may need to provide up to 10 hours of work @ \$71/hour to adapt ASP management practices to segregate client funds not yet expended from ASP operating and reserve funds, if the ASP does not already have such a process:</p> <p><b>Range:</b> <math>(1 \times \\$71)</math> to <math>(10 \times \\$71) = \\$71</math> to \$710</p>

9.3.1.1	<p><b>Subtotal: Year 1, Step A, costs to one firm =</b> \$71 to \$710</p>
9.3.2	<p><b>Step B. Costs to implement a segregation management plan.</b> Bookkeeping/accounting/auditing financial clerical staff may need to put into effect a segregation management plan for existing and future clients. Keeping client funds not yet expended segregated from ASP operating funds is an ongoing expense, although the cost to do it on an ongoing basis is much lower than the cost of initially establishing segregation processes</p>
9.3.2.P1	<p><b>Part 1.</b> Bookkeeping clerical staff, up to 40 hours in the first year @ \$21/hour, to perform the segregation tasks. <b>Range:</b> (1 x \$21) to (40 x \$21) = \$21 to \$840</p>
9.3.2.1	<p><b>Subtotal: Year 1, Step B, Part 1, costs for one firm =</b> \$21 to \$840</p>
9.3.2.P2	<p><b>Part 2.</b> In subsequent years, segregating the funds becomes more routine. Bookkeeping clerical staff, up to 20 hours in subsequent years @ \$21/hour. <b>Range:</b> (1 x \$21) to (20 x \$21) = \$21 to \$420</p>
9.3.2.2	<p><b>Subtotal: Subsequent years, Step B, Part 2, costs for one firm =</b> \$21 to \$420</p>
9.3.2.P3	<p>During the first year, an ASP also needs to put in place a process for evaluating whether the segregation of funds is effective or not and assign someone to do research and analysis relating to how well the segregation of funds is working. One auditing professional for up to 10 hours at \$38/hour: <b>Range:</b> (1 x \$38) to (10 x \$38) = \$38 to \$380</p>
9.3.2.3	<p><b>Subtotal: Year 1, Step B, Part 3, costs for one firm =</b> \$38 to \$380</p>
9.3.2.P4	<p><b>Part 4.</b> Bookkeeping clerical staff, 20 hours @ \$21/hour = <b>Range:</b> (1 x \$21) to (20 x \$21) = \$21 to \$420</p>

9.3.2.4	<b>Subtotal: Year 1, Step B, Part 4, costs for one firm =</b> \$21 to \$420
9.3.2.5	<b>Subtotal: Subsequent years, Step B, Part 4, costs for one firm =</b> \$21 to \$420
9.3.2.6	<b>TOTAL: Year 1, Step B, All Parts, costs for one firm =</b> (\$21 + \$38 + \$21) to (\$840 + \$380 + \$420) = <b>Range: \$80 to \$1,640</b>
9.3.2.7	<b>TOTAL: Subsequent years, Step B, All Parts, costs for one firm =</b> = (\$21 + \$21) to (\$420 + \$420) = <b>Range: \$42 to \$840</b>
9.3.3	<b>Step C. Revising existing policies and procedures and public information and updating existing staff training</b>
9.3.3.P1	<b>Part 1.</b> This will take up to 15 hours. Trainings specialist time @ \$38/hours. <b>Range: (1 x \$38) to (15 x \$38) = \$38 to \$570</b>
9.3.3.1	<b>Subtotal: Year 1, Step C, Part 1, costs for one firm =</b> \$38 to \$570
9.3.3.P2	<b>Part 2.</b> And up to 20 hours of social work staff time @ \$31/hour. <b>Range: (1 x \$31) to (20 x \$31) = \$31 to \$620</b>
9.3.3.2	<b>Subtotal: Year 1, Step C, Part 2, costs for one firm =</b> \$31 to \$620
9.3.3.3	<b>TOTAL: Year 1, Step C, Part 2, costs for one firm =</b> (\$38 + \$31) to (\$570 + \$620) = <b>Range: \$69 to \$1,190</b>
9.3.4	<b>GRAND TOTAL:</b> <b>Year 1 costs for one firm =</b> (\$71 + \$80 + \$69) to (\$710 + \$1,640 + \$1,190) = <b>Range: \$220 to \$3,540</b>

9.3.5	<p><b>GRAND TOTAL:</b></p> <p><b>Subsequent year costs for one firm =</b></p> <p><b>Range:</b> \$42 to \$840</p>
9.3.6	<p><b>GRAND TOTAL:</b></p> <p><b>Year 1 costs for all firms =</b></p> <p>(90 x \$220) to (90 x \$3,540) =</p> <p><b>Range:</b> \$19,800 to \$318,600</p>
9.3.7	<p><b>GRAND TOTAL:</b></p> <p><b>Subsequent year costs for all firms =</b></p> <p>(90 x \$42) to (90 x \$840) =</p> <p><b>Range:</b> \$3,780 to \$75,600</p>
10	<b>Preamble Section: II-D-1</b>
10.1	<p><i>Current Rule Provisions</i></p> <p><b>Placement and Post-Placement Monitoring § 96.50</b></p> <p>Section 96.50 requires an ASP to monitor and supervise a child's placement before adoption, provide counseling if a crisis arises, provide certain services if a placement disrupts, and provide notification of the disruption to the Central Authority of the country of origin and the Department, but does not provide time frames for notification.</p>
10.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>Newly organized § 96.50 (c) through (h) expand on the actions an ASP must take if a placement appears to be failing and if it does fail, and adds a requirement of notification to the Department and the Central Authority in the country of origin within 24 hours. The new provisions also address disruptions that occur while the child and PAPs are still in the country of origin. They also address providing or arranging counseling services in the event of disruption.</p>
10.3	<i>Potential Compliance Cost for Small Firms</i>
10.3.1	<p><b>Step 1. Updating policies and procedures</b> would require up to 10 Social Worker Hours @ \$31/hour</p> <p><b>Range:</b> (1 x \$31) to (10 x \$31) = \$31 to \$310</p>

10.3.1.1	<b>Subtotal: Step 1 costs for one firm =</b> <b>Range:</b> \$31 to \$310
10.3.1.2	<b>Subtotal: Step 1 costs for all firms =</b> (90 x \$31) to (90 x \$310) = <b>Range:</b> \$2,790 to \$27,900
10.3.2	<b>Step 2. Update internal and external training:</b> Training and development specialist (between 10 and 25 hours @ \$32/hour) to update internal training and external training as appropriate: <b>Range:</b> (10 x \$32) to (25 x \$32) = \$320 to \$800
10.3.2.1	<b>Subtotal: Step 2 costs to one firm =</b> \$320 to \$800
10.3.2.2	<b>Subtotal: Step 2 costs for all firms =</b> (90 x \$320) to (90 x \$800) = <b>Range =</b> \$28,800 to \$72,000
10.3.3	<b>TOTAL: Steps 1 and 2 costs for one firm =</b> (\$31 + \$320) to (\$310 + \$800) = <b>Range =</b> \$351 to \$1,110
10.3.3	<b>TOTAL: Steps 1 and 2 costs for all firms =</b> (90 x \$351) to (90 x \$1,110) = <b>Range:</b> \$31,590 to \$99,900

11	<b>Preamble Section: II-D-2</b>
11.1	<i>Current Rule Provisions</i> <b>Post-adoption Services § 96.51</b> Currently § 96.51 provides for good faith efforts on the part of an ASP to obtain post-adoption reports from the adoptive family. It also instructs on the topic of returning a child to the country of origin in the event of a dissolution.

11.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>Provisions proposed in § 96.51(b) would require ASPs to inform PAPs whether post-adoption services, including post-adoption reporting, are included in the ASP's fees, and if not, enumerates the cost for such services. ASPs must also inform PAPs of services it will provide in the event of a dissolution, or, if it will not provide such services itself, it provides information about other resources that may be consulted if an adoption is dissolved.</p>
11.3	<p><i>Potential Compliance Cost for Small Firms</i></p>
11.3.1	<p><b>Step 1. Updating policies and procedures</b> would require up to 10 Social Worker Hours @ \$31/hour</p> <p><b>Range:</b> (1 x \$31) to (10 x \$31) = \$31 to \$310</p>
11.3.1.1	<p><b>Subtotal: Step 1 costs for one firm =</b></p> <p><b>Range:</b> \$31 to \$310</p>
11.3.1.2	<p><b>Subtotal: Step 1 costs for all firms =</b></p> <p>(90 x \$31) to (90 x \$310) =</p> <p><b>Range:</b> \$2,790 to \$27,900</p>
11.3.2	<p><b>Step 2. Update internal and external training:</b> Training and development specialist (between 10 and 25 hours @ \$32/hour) to update internal training and external training as appropriate:</p> <p><b>Range:</b> (10 x \$32) to (25 x \$32) = \$320 to \$800</p>
11.3.2.1	<p><b>Subtotal: Step 2 costs for one firm =</b></p> <p>\$320 to \$800</p>
11.3.2.2	<p><b>Subtotal: Step 2 costs for all firms =</b></p> <p>(90 x \$320) to (90 x \$800)</p> <p><b>Range =</b> \$28,800 to \$72,000</p>
11.3.3	<p><b>TOTAL: Steps 1 and 2 costs for one firm =</b></p> <p>(\$31 + \$320) to (\$310 + \$800) =</p> <p><b>Range =</b> \$351 to \$1,110</p>
11.3.4	<p><b>TOTAL: Steps 1 and 2 costs for all firms =</b></p> <p>(90 x \$351) to (90 x \$1,110) =</p> <p><b>Range:</b> \$31,590 to \$99,900</p>



<b>12</b>	<b>Preamble Section: II-E-1</b>
<b>12.1</b>	<p><i>Current Rule Provisions</i></p> <p><b>Complaints § 96.41</b></p> <p>Allows for written, signed complaints that are submitted directly to an ASP, with recourse to an AE if the complainant is not satisfied with how the complaint was resolved by the ASP.</p>
<b>12.2</b>	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>This provision provides for written complaints but removes the requirement for signature and allows for submission of complaints by electronic means.</p>
<b>12.3</b>	<i>Potential Compliance Cost for Small Firms</i>
<b>12.3.1</b>	<p><b>Step 1. Updating policies and procedures</b> would require up to 10 Social Worker Hours @ \$31/hour</p> <p><b>Range:</b> (1 x \$31) to (10 x \$31) = \$31 to \$310</p>
<b>12.3.1.1</b>	<p><b>Subtotal: Step 1 costs for one firm =</b></p> <p><b>Range:</b> \$31 to \$310</p>
<b>12.3.1.2</b>	<p><b>Subtotal: Step 1 costs for all firms =</b></p> <p>(90 x \$31) to (90 x \$310) =</p> <p><b>Range:</b> \$2,790 to \$27,900</p>
<b>12.3.2</b>	<p><b>Step 2. Update internal and external training:</b> Training and development specialist (between 10 and 25 hours @ \$32/hour) to update internal training and external training as appropriate:</p> <p><b>Range:</b> (10 x \$32) to (25 x \$32) = \$320 to \$800</p>
<b>12.3.2.1</b>	<p><b>Subtotal: Step 2 costs to one firm =</b></p> <p>\$320 to \$800</p>
<b>12.3.2.2</b>	<p><b>Subtotal: Step 2 costs for all firms =</b></p> <p>(90 x \$320) to (90 x \$800) =</p> <p><b>Range =</b> \$28,800 to \$72,000</p>

12.3.3	<p><b>TOTAL: Steps 1 and 2 costs for one firm =</b>  (\$31 + \$320) to (\$310 + \$800) =  <b>Range = \$351 to \$1,110</b></p>
12..3.4	<p><b>TOTAL: Steps 1 and 2 costs for all firms =</b>  (90 x \$351) to (90 x \$1,110) =  <b>Range: \$31,590 to \$99,900</b></p>
13	<b>Preamble Section: II-F-1</b>
13.1	<p><i>Current Rule Provisions</i></p> <p><b>Placement Standards in outgoing Cases § 96.54(a)</b></p> <p>Currently, § 96.54(a) permits ASPs to facilitate birth parent placement with PAPs in foreign countries without undertaking efforts to find a placement in the United States.</p>
13.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>Proposed revisions to § 96.54(a) require ASPs to make reasonable efforts to find a timely and qualified placement in the United States before placing a child abroad. The new § 96.54(c) reinforces the requirement for ASPs to document their efforts for the responsible court approving an outgoing adoption of a child from the United States.</p>
13.3	<p><i>Potential Compliance Cost for Small Firms</i></p> <p>The Department lacks current information on the costs required to recruit PAPs within the United States. In the past year, the Department received notification of 83 outgoing adoptions. The provisions in § 96.54(a) only apply in non-relative placements. We do not know what the proportion of relative to non-relative adoptions there are.</p> <p>We do know that of the 90 small business entity ASPs, only 17 do outgoing cases, a small percentage of all accredited and approved ASPs.</p> <p>Our conclusion is that we cannot estimate the cost of these changes, but assume based on the number of possible applicable cases annually the overall impact of these changes in § 96.54 would be very small. We invite comment from the public on this issue.</p>
14	<b>Preamble Section: II-F-2</b>

14.1	<p><i>Current Rule Provisions</i></p> <p><b>Placement of Siblings in Outgoing Cases § 96.54(c)(2)</b></p> <p>Section 96.54(c)(2) currently provides for making diligent efforts to place siblings together consistent with State law in outgoing cases.</p>
14.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>Changes to § 96.54(d)(1) relating to placement of siblings together include the following new language, “To the extent consistent with State law, the Convention, the IAA and these regulations, . . .,” which expands the basis upon which sibling placements should be made. This is a change in degree of emphasis suggesting that the weight of the law is in favor of sibling placement together in outgoing cases even in the absence of a State law requiring it.</p>
14.3	<p><i>Potential Compliance Cost for Small Firms</i></p>
14.3.1	<p><b>Step 1. Updating policies and procedures</b> would require up to 10 Social Worker Hours @ \$31/hour</p> <p><b>Range:</b> (1 x \$31) to (10 x \$31) = \$31 to \$310</p>
14.3.1.1	<p><b>Subtotal: Step 1 costs for one firm =</b></p> <p><b>Range:</b> \$31 to \$310</p>
14.3.1.2	<p><b>Subtotal: Step 1 costs for all firms =</b></p> <p>(90 x \$31) to (90 x \$310) =</p> <p><b>Range:</b> \$2,790 to \$27,900</p>
14.3.2	<p><b>Step 2. Update internal and external training:</b> Training and development specialist (between 10 and 25 hours @ \$32/hour) to update internal training and external training as appropriate:</p> <p><b>Range:</b> (10 x \$32) to (25 x \$32) = \$320 to \$800</p>
14.3.2.1	<p><b>Subtotal: Step 2 costs for one firm =</b></p> <p>\$320 to \$800</p>
14.3.2.2	<p><b>Subtotal: Step 2 costs for all firms =</b></p> <p>(90 x \$320) to (90 x \$800) =</p> <p><b>Range:</b> \$28,800 to \$72,000</p>

14.3.3	<p><b>TOTAL: Steps 1 and 2 costs for one firm =</b>  (\$31 + \$320) to (\$310 + \$800) =  <b>Range:</b> \$351 to \$1,110</p>
14.3.4	<p><b>TOTAL: Steps 1 and 2 costs for all firms =</b>  (90 x \$351) to (90 x \$1,110) =  <b>Range:</b> \$31,590 to \$99,900</p>
15	<b>Preamble Section: II-G-1</b>
15.1	<p><i>Current Rule Provisions</i></p> <p><b>Retention of Records Relating to meetings and major decision of the ASP's governing body § 96.32(c)</b></p> <p>The current standard calls for maintaining permanent records of meetings and decisions of the governing body.</p>
15.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>Changes proposed for § 96.32(c) reduce the retention period to 25 years and includes among records to retain those relating to selection, monitoring, and oversight of supervised providers, and records of financial transactions to and from foreign countries.</p>
15.3	<p><i>Potential Compliance Cost for Small Firms</i></p> <p>Compliance would require a multi-step process:</p>
15.3.1	<p><b>Step 1. Updating policies and procedures.</b> Up to 5 Social Worker Hours at \$31/hour are needed for this task.</p> <p><b>Range:</b> (1 x \$31) to (5 x \$31) = \$31 to \$155</p>
15.3.1.1	<b>Subtotal: Step 1 costs for one firm = \$31 to \$155</b>
15.3.2	<p><b>Step 2.</b> Revision of materials for the public including information on an ASP's website and updating existing staff training to reflect the new record retention requirements. This could be accomplished by:</p> <p>Country program officer/social worker, 2 hours @ \$31/hour per foreign program, for 1 to 10 programs:</p> <p><b>Range:</b> (1 x (2 x \$31)) to (10 x (2 x \$31)) = \$62 to \$620</p>
15.3.2.1	<b>Subtotal: Step 2 costs for one firm = \$62 to \$620</b>

15.3.3	<p><b>Step 3.</b> Training and development specialist, 1 hour @ \$32/hour per foreign program, up to 10 foreign programs.</p> <p><b>Range:</b> (1 x \$32) to (10 x \$32)</p>
15.3.3.1	<p><b>Subtotal: Step 3 costs for one firm = \$32 to \$320</b></p>
15.3.4	<p><b>TOTAL: Steps 1, 2, and 3 costs for one firm:</b>  (\$31 + \$62 + \$32) to (\$155 + \$620 + \$320) =</p> <p><b>Range:</b> \$125 to \$1,095</p>
15.3.5	<p><b>TOTAL: Steps 1, 2, and 3 costs for all firms:</b>  (90 x \$125) to (90 x \$1,095) =</p> <p><b>Range:</b> \$11,250 to \$98,550</p>
16	<p><b>Preamble Section: II-G-2</b></p>
6.1	<p><i>Current Rule Provisions</i></p> <p><b>Other Record Keeping § 96.32(e)(4)</b></p>
16.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>The new subsection § 96.32(e)(4) introduces a new reporting requirement. All ASPs must maintain point of contact information for all entities with whom an ASP shares any leadership, officers, board of directors, or family relationships if the ASP provides any service to it, or receives payment from it.</p>
16.3	<p><i>Potential Compliance Cost for Small Firms</i></p> <p>Compliance would require a multi-step process:</p>
16.3.1	<p><b>Step 1. Updating policies and procedures.</b> Up to 5 Social Worker Hours at \$31/hour are needed for this task.</p> <p><b>Range:</b> (1 x \$31) to (5 x \$31) = \$31 to \$155</p>
16.3.1.1	<p><b>Subtotal: Step 1 costs for one firm = \$31 to \$155</b></p>

16.3.2	<p><b>Step 2.</b> Revision of materials for the public including information on an ASP's website and updating existing staff training to reflect the new record retention requirements. This could be accomplished by:</p> <p>Country program officer/social worker, 2 hours @ \$31/hour per foreign program, for 1 to 10 programs:</p> <p><b>Range:</b> (1 x (2 x \$31)) to (10 x (2 x \$31)) = \$62 to \$620</p>
16.3.2.1	<p><b>Subtotal: Step 2 costs for one firm</b> = \$62 to \$620</p>
16.3.3	<p><b>Step 3.</b> Training and development specialist, 1 hour @ \$32/hour per foreign program, up to 10 foreign programs.</p> <p><b>Range:</b> (1 x \$32) to (10 x \$32)</p>
16.3.3.1	<p><b>Subtotal: Step 3 costs for one firm</b> = \$32 to \$320</p>
16.3.4	<p><b>TOTAL: Steps 1, 2, and 3 costs for one firm:</b></p> <p>(\$31 + \$62 + \$32) to (\$155 + \$620 + \$320) =</p> <p><b>Range:</b> \$125 to \$1,095</p>
16.3.5	<p><b>TOTAL: Steps 1, 2, and 3 costs for all firms:</b></p> <p>(90 x \$125) to (90 x \$1,095) =</p> <p><b>Range:</b> \$11,250 to \$98,550</p>
17	<p><b>Preamble Section: II-“Eye”-1</b></p>
17.1	<p><i>Current Rule Provisions</i></p> <p><b>Deliberate destruction of documentation or provision of false or misleading information § 96.25(c)</b></p>
17.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>The additions to § 96.25(c) will permit an AE to take adverse action if an ASP engages in deliberate destruction of documentation or provides false or misleading documents or information to an AE.</p>

17.3	<p><i>Potential Compliance Cost for Small Firms</i></p> <p>This change can be implemented by updating policies and procedures using up to 3 hours of social work time @ \$31/hour.</p> <p><b>Range:</b> (1 x \$31) to (3 x \$31) = \$31 to \$93</p> <p><b>Total cost for one firm:</b> \$31 to \$93</p> <p><b>Total cost for all firms:</b> (90 x \$31) to (90 x \$93) =</p> <p><b>Range:</b> \$2,790 to \$8,370</p>
18	<p><b>Preamble Section: II--“Eye”-2</b></p>
18.1	<p><i>Current Rule Provisions</i></p> <p><b>Professional experience required for social service personnel 96.37(c)</b></p>
18.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>A minor change to § 96.37(c) allows certain employees providing adoption-related services that require the application of clinical skills and judgment to qualify to occupy such positions on the basis of experience or training, training being the new basis.</p>
18.3	<p><i>Potential Compliance Cost for Small Firms</i></p> <p>This change requires no compliance efforts by ASPs; we do not anticipate this new provision will create an added burden on small firms.</p>
19	<p><b>Preamble Section: II--“Eye”-3</b></p>
19.1	<p><i>Current Rule Provisions</i></p> <p><b>Training Requirements for Social Service Personnel § 96.38(b)</b></p> <p>The current § 96.38(b) delineates topics of training both for initial training and for ongoing training for social service personnel.</p>
19.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>Amendments to § 96.38(b) add additional topics of training such as adverse childhood experience; trauma; psychological, cognitive, and emotional issues; sexual abuse; and increased risks involving older children.</p>
19.3	<p><i>Potential Compliance Cost for Small Firms</i></p> <p>Compliance would require a multi-step process:</p>

19.3.1	<p><b>Step 1. Updating policies and procedures.</b> Up to 5 Social Worker Hours at \$31/hour are needed for this task.</p> <p><b>Range:</b> (1 x \$31) to (5 x \$31) = \$31 to \$155</p>
19.3.1.1	<p><b>Subtotal: Step 1 costs for one firm = \$31 to \$155</b></p>
19.3.2	<p><b>Step 2.</b> Revision of materials for the public including information on an ASP's website and updating existing staff training to reflect the new record retention requirements. This could be accomplished by:</p> <p>Country program officer/social worker, 2 hours @ \$31/hour per foreign program, for 1 to 10 programs:</p> <p><b>Range:</b> (1 x (2 x \$31)) to (10 x (2 x \$31)) = \$62 to \$620</p>
19.3.2.1	<p><b>Subtotal: Step 2 costs for one firm = \$62 to \$620</b></p>
19.3.3	<p><b>Step 3.</b> Training and development specialist, 1 hour @ \$32/hour per foreign program, up to 10 foreign programs.</p> <p><b>Range:</b> (1 x \$32) to (10 x \$32)</p>
19.3.3.1	<p><b>Subtotal: Step 3 costs for one firm = \$32 to \$320</b></p>
19.3.4	<p><b>TOTAL: Steps 1, 2, and 3 costs for one firm:</b> (\$31 + \$62 + \$32) to (\$155 + \$620 + \$320) =</p> <p><b>Range:</b> \$125 to \$1,095</p>
19.3.5	<p><b>TOTAL: Steps 1, 2, and 3 costs for all firms:</b> (90 x \$125) to (90 x \$1,095) =</p> <p><b>Range:</b> \$11,250 to \$98,550</p>
20	<p><b>Preamble Section: II--“Eye”-4</b></p>
20.1	<p><i>Current Rule Provisions</i></p> <p><b>Exemption from training for newly hired social service staff in certain circumstances § 96.38(d)</b></p> <p>The current regulation does not include such exemptions from training.</p>



20.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>This new provision in § 96.38(d) includes an exemption from initial training for new employees if within the previous two years the new employee had been employed by an accredited ASP where they had received orientation training similar to that envisioned in this section.</p>
20.3	<p><i>Potential Compliance Cost for Small Firms</i></p> <p>Updating policies and procedures. Up to 5 Social Worker Hours at \$31/hour are needed</p> <p><b>Range:</b> (1 x \$31) to (5 x \$31) = \$31 to \$155</p> <p><b>Cost for one firm:</b> \$31 to \$155</p> <p><b>Cost for all firms:</b> (90 x \$31) to (90 x \$155)</p> <p><b>Range:</b> \$2,790 to \$13,950</p>
21	<b>Preamble Section: II--“Eye”-5</b>
21.1	<p><i>Current Rule Provisions</i></p> <p><b>Withdrawal of home study approval 96.47(e)</b></p> <p>There are no standards relating to this topic in the current regulation.</p>
21.2	<p><i>Proposed Changes to the Accreditation Rule</i></p> <p>New § 96.47(e) will provide a justification and procedures for withdrawal of home study approval for cause. The new provisions reflect the same guidance USCIS has given on this topic informally for the past several years.</p>
21.3	<p><i>Potential Compliance Cost for Small Firms</i></p> <p>Compliance would require a multi-step process:</p>
21.3.1	<p><b>Step 1. Updating policies and procedures.</b> Up to 5 Social Worker Hours at \$31/hour are needed for this task.</p> <p><b>Range:</b> (1 x \$31) to (5 x \$31) = \$31 to \$155</p>
21.3.1.1	<b>Subtotal: Step 1 costs for one firm = \$31 to \$155</b>

21.3.2	<p><b>Step 2.</b> Revision of materials for the public including information on an ASP's website and updating existing staff training to reflect the new record retention requirements. This could be accomplished by:</p> <p>Country program officer/social worker, 2 hours @ \$31/hour per foreign program, for 1 to 10 programs:</p> <p><b>Range:</b> (1 x (2 x \$31)) to (10 x (2 x \$31)) = \$62 to \$620</p>
21.3.2.1	<p><b>Subtotal: Step 2 costs for one firm = \$62 to \$620</b></p>
21.3.3	<p><b>Step 3.</b> Training and development specialist, 1 hour @ \$32/hour per foreign program, up to 10 foreign programs.</p> <p><b>Range:</b> (1 x \$32) to (10 x \$32)</p>
21.3.3.1	<p><b>Subtotal: Step 3 costs for one firm = \$32 to \$320</b></p>
21.3.4	<p><b>TOTAL: Steps 1, 2, and 3 costs for one firm:</b></p> <p>(\$31 + \$62 + \$32) to (\$155 + \$620 + \$320) =</p> <p><b>Range:</b> \$125 to \$1,095</p>
21.3.5	<p><b>TOTAL: Steps 1, 2, and 3 costs for all firms:</b></p> <p>(90 x \$125) to (90 x \$1,095) =</p> <p><b>Range:</b> \$11,250 to \$98,550</p>