

DEPARTMENT OF STATE

22 CFR Part 96

[Public Notice: 12242]

RIN 1400-AE39

Intercountry Adoption: Regulatory Changes to Accreditation and Approval Regulations in Intercountry Adoption

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (the Department) publishes a final rule revising the Code of Federal Regulations to amend requirements for accreditation and approval by the United States to provide adoption services in intercountry adoption cases. This rule amends regulations to provide clarification, updates, or other adaptation of familiar accreditation and approval standards for intercountry adoption. It also includes a new section with alternative procedures for primary providers that apply in intercountry adoption by relatives. The new regulations for adoption by relatives simplify and streamline the adoption process by limiting the number of adoption services the primary provider must provide. The final rule emphasizes that accredited agencies and approved persons comply with all applicable laws in foreign countries where they provide adoption services.

DATES: This final rule becomes effective January 8, 2025.

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SUPPLEMENTARY INFORMATION:**Preamble Contents**

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I. Introduction

This final rule amends 22 CFR part 96 and the changes clarify and update the 2006 final rule that established the

regulatory framework for the accreditation and approval function required under the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention), the Intercountry Adoption Act of 2000 (IAA), and the Intercountry Adoption Universal Accreditation Act of 2012 (UAA). The Department drew from its 17 years of observations and experience with the accreditation regulations to reflect the rule's practical operation, and from the observations of adoption stakeholders including, but not limited to, adoptive parents, adoption service providers (ASPs), Congressional offices, adult adoptees, and law enforcement authorities.

On November 20, 2020, the Department published a notice of proposed rulemaking (NPRM, often referred in this preamble as the proposed rule). The proposed rule included changes to subparts A, B, E, F, L, and M and a new subpart R. The Department intends to examine changes to the remaining subparts at a later time.

This final rule takes into account public comments received in response to the NPRM. The Department appreciates the extensive feedback received from stakeholders in response to the NPRM and notes the many contributions from stakeholders who recommended substantive revisions to the Department's changes in the proposed rule. The final rule incorporates many of the substantive revisions proposed by the public. Additionally, as explained below, this rule does not include three major sections of the proposed rule. The Department will consider consultations with stakeholders before making further regulatory proposals relating to these three sections.

II. Overview of Major Changes and Provisions in the Final Rule

This section of the final rule summarizes the major differences between the proposed rule and the final rule. This overview is followed in part III by a detailed, section-by-section discussion of significant comments received in response to the NPRM.

A. Adoption by Relatives

The long-anticipated¹ new provisions on adoption by relatives were welcomed

¹ The IAA provided in section 502(a) for establishment by regulation of alternative procedures for adoption of children by relatives. The Department did not include alternative procedures for adoption by relatives in its accreditation rule published in 2006, which this rule amends, opting to pursue it later once the new accreditation rule was implemented. Adoption

by most commenters, though some thought the new provisions did not go far enough in streamlining the required adoption services and should have further limited the role of primary providers in relative cases. Most commenters, however, welcomed the simplified role of the primary provider in the proposed rule requiring primary providers to focus on three of the six adoption services listed in the CFR:²

- (3) Performing a background study on a child or a home study on a prospective adoptive parent(s), and reporting on such a study;
- (5) Monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption; and
- (6) When necessary because of a disruption before final adoption, assuming custody and providing (including facilitating the provision of) childcare or any other social service pending an alternative placement.

The new provisions in § 96.100 allow a primary provider to develop and implement an adoption service plan addressing only three adoption services noted above in adoption by relatives. In all other intercountry adoptions, the primary provider must develop and implement a service plan for providing all six adoption services, in accordance with § 96.44. The provisions in § 96.100(d) require that the alternative procedures in § 96.100 be performed in accordance with the Convention, the IAA, the UAA and their implementing regulations.

Some commenters expressed the preference that post-placement monitoring should not be required at all in adoptions by relatives. The Department emphasizes that post-placement monitoring mandated in the IAA remains an important element of the adoption services in the final rule,

service providers with clients adopting relatives asked frequently over the intervening years when the Department would produce alternative procedures for relative cases.

² 22 CFR 96.2 Definitions: *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.

including with respect to the adoption by relatives. Adoption services five and six include essential services related to monitoring the continued well-being of the child's placement and to ensuring that the prospective adoptive parents can care for the particular needs of a child. Unlike other services that may not be applicable or made redundant in the context of a pre-existing relationship, services 5 and 6 apply equally whether or not the child is related to the prospective adoptive parents.

The public comments also revealed disagreement regarding how the term "relative" should be defined and to which family relationships the alternative procedures for primary providers should apply. Some commenters preferred the relationships found in the regulations of the Department of Homeland Security (DHS) at 8 CFR 204.309(b)(2)(iii) which are exempt from the prohibition on prior contact with a child's parents or caregivers. Section 96.2 Definitions includes a definition of relative relationships that applies solely to determinations of when those alternative procedures for primary providers in § 96.100 may be used. Although the Department's and DHS's definitions overlap quite a bit, they differ enough in content and purpose that the Department retained its proposed definition of "relative" in the final rule. The definition of "relative," and other public comments related to subpart R are further addressed in the section-by-section discussion in part III, below, and in appendix A at the end of this notice.

B. Compliance With All Applicable Laws

In the NPRM, the Department proposed a new section 96.29 in subpart F identifying conduct that does not conform to the regulatory framework of the IAA. Commenters found the new provisions to be duplicative and pointed out that agencies and persons were already required to operate in accordance with the Convention, the IAA, the UAA, and their implementing regulations. They suggested that restating the principle again as a new standard in subpart F was not necessary. The final rule does not include a new section 96.29. The Department instead retained the provisions on compliance with applicable laws in foreign countries in section 96.30 and renamed that section State Licensing and Compliance with All Applicable Laws. For a discussion of this and other provisions proposed in section 96.29,

see the public comment discussion of § 96.29 in section III of this preamble.

C. Child Care Payments

The changes to sections 96.36(a) and 96.40(c)(4) in the NPRM would have prohibited ASPs from charging prospective adoptive parents for the care of a particular child prior to the completion of the intercountry adoption process. Payments for specific child welfare activities, if permitted by the country of origin, are controversial because of the potential risk of diverting payments to support illicit practices such as recruiting children into institutions or incentivizing institutions to retain children longer than necessary, and as such, have been prohibited by many countries. The Department recognizes, however, that prohibiting such payments that could pay for essential needs such as food, medical care, and other child welfare-related services may be detrimental to children, particularly for children awaiting adoption who have special needs.

Commenters pointed out that historically payments were allowed if permitted or required by the child's country of origin. Several commenters noted the regularity with which the health of a child with special needs deteriorates and medical needs increase during the time between the referral and the final adoption, and that preventing funding for such care, if permitted by the country of origin, would not be in the best interests of the child. As discussed in section III of this preamble, the Department did not retain in the final rule proposed changes to § 96.36(a). This final rule reinforces the standard in § 96.36(a) with changes to § 96.36(b) that augment recordkeeping requirements on the payment of fees in connection with intercountry adoption. Enhanced standards for recordkeeping will increase the oversight of any permitted or required payments for specific activities related to the adoption as outlined in § 96.36(a). The recordkeeping requirements will help decrease the risk that payments intended to benefit children will be diverted for illicit purposes. It will also assist agencies and persons to effectively monitor and oversee payments and fees paid by their employees and supervised providers in connection with an intercountry adoption. In no instance shall permitted or required contributions be remitted as payment or as an inducement to release a child for adoption.

D. Procedures and Requirements for Adverse Action by the Secretary, Including for Challenges to Such Adverse Action

The proposed changes to section 96.83 in subpart L impact provisions regarding adverse action by the Secretary leading to suspension or cancellation of an agency or person's accreditation or approval. The changes include procedural requirements for notifying agencies and persons of adverse actions taken by the Secretary and the reasons for such action. New sections 96.84(a) and (b) describe the administrative process by which an ASP may request withdrawal of the suspension or cancellation as unwarranted and the standards the Department will use to review such a request. The process mirrors provisions in § 96.76 in which an ASP may provide information to an accrediting entity to demonstrate that an adverse action was unwarranted. This process is independent of a petition for relief from the Secretary's suspension or cancellation and is based upon the ASP's correction of deficiencies. A petition for relief is now addressed in § 96.84(c) and is similar to provisions in § 96.78(a).

A number of commenters appreciated the introduction of due process features when the Secretary imposes adverse action of suspension or cancellation. Other commenters thought accrediting entities should adhere to such procedures when imposing adverse actions, particularly providing specific evidence relied on to support the adverse action. The discussion in the section-by-section analysis for section 96.83 explains that some due process provisions in § 96.83 go farther than those governing adverse action by accrediting entities in § 96.76. This is largely because of the emergent nature of the conduct triggering suspension or cancellation by the Secretary. Similarly, imposing adverse action before providing an opportunity to rebut the Department's conclusions is justified and often cannot wait when the imposition of adverse action relates to child safety or other serious or emergent compliance issues.

In 2016, the Department exercised its authority for the first time to debar an agency and determined based on that experience that it would be beneficial to propose relevant details in the regulations as to the notice, evidentiary, and procedural requirements relating to debarment proceedings. Section 96.88 sets forth the procedures, requirements, time frames, and standards of review that apply when the Department

undertakes a debarment proceeding when prior notice is given. In § 96.89, the Department sets forth the corresponding procedures, requirements, time frames, and standards of review for debarment effective immediately, without prior notice. Some commenters objected to short time frames to obtain and present information in the proceedings and the lack of common procedural features such as discovery. They asserted the lack of discovery, for example, might prejudice the agency's or person's ability to respond fully to claims against it. The Department considers these and other comments relating to debarment proceeding procedures and requirements in the section-by-section analysis in part III of this preamble, including appeal options in federal court and notification requirements when the Secretary debars an accredited agency or approved person.

E. Pausing on Revising Standards in Three Sections of Subpart F

The Department received public comments expressing concern or disagreement about parts of the proposed changes in sections 96.40, 96.50, and 96.54 in the proposed rule. The Department concluded that the issues raised in these comments warrant further consideration. This final rule does not include revisions to these three sections. A brief summary of the relevant comments and content of these sections follows:

§ 96.40: Fee Policies and Procedures

Comments submitted about standards relating to adoption fees and expenses uniformly expressed concern with the way the Department characterized fees relating to intercountry adoption practice and the burden on adoption service providers to revise, recalculate, and report fee schedules conforming to the proposed changes. Commenters indicated the proposed rubrics failed to reflect the way agencies and persons structure their work as well as the flexibility needed to adapt to dynamic conditions.

§ 96.50: Placement and Post-Placement Monitoring Until Final Adoption in Incoming Cases

The revisions to § 96.50 in the proposed rule would have expanded required efforts by ASPs for taking action in the event of a disruption and reporting to all relevant authorities about disruption cases. Commenters asserted the proposed changes would require significant resources to implement.

§ 96.54: Placement Standards in Outgoing Convention Cases

We received many comments relating to the proposed changes to this section. The comments were against making any of our proposed changes, arguing among other things that the provisions would have a negative impact on outgoing adoption practice.

Two Additional Sections in Subpart F Ready for Renewed Consultations

Several commenters expressed strong interest in making changes to two additional sections in subpart F, sections 96.46 and 96.48.

§ 96.46: Using Providers in Foreign Countries

Regarding foreign supervised providers, in the proposed rule the Department acknowledged there were areas of discord relating to oversight of foreign supervised providers. We stated our intention to undertake a consultative process on these issues that would consider the entire range of standards relating to foreign supervised providers. In addition to a few minor textual updates to § 96.46 in the NPRM and in the final rule, we made changes to § 96.46(b)(7) and (8) requiring all payments to foreign supervised providers be provided through the primary provider. The primary provider must also provide prospective adoptive parents with a written explanation about the return of unused funds within 60 days.

§ 96.48: Preparation and Training of Prospective Adoptive Parents in Incoming Cases

Several commenters were disappointed that the proposed rule did not amend the requirements for parent preparation and training. The commenters expressed a need to increase the number of hours required for parent preparation and welcomed an opportunity to collaborate on the parameters of such training. No such changes are reflected in the final rule but further consideration will be given to these suggestions.

F. Other Significant Changes

Changes to Elements in Subpart A, General Provisions

In the definitions section of the final rule, § 96.2, we did not retain the proposed definition of "authorization." Commenters noted this feature of the Hague Adoption Convention, Article 12, is already incorporated into the regulations in the many references to compliance with the Convention and further definition would be repetitive.

In the final rule, we have kept several of the proposed changes to the definition of "best interests of the child" in § 96.2. The definition in the final rule clarifies how U.S. accredited and approved providers should consider the best interests of a child when the child is abroad and outside the jurisdiction of a U.S. State. The NPRM only included a reference to the Convention in the proposed revision to the definition of best interests of the child. Based on public comments, the definition in the final rule also includes a reference to the IAA, the UAA, and their implementing regulations.

We made a change from the NPRM to the definition of "supervised provider," adding for clarity the term "domestic or" before the term "foreign entity."

We did not retain a definition of "unregulated custody transfer" (UCT) in the NPRM, in response to comments noting that States have jurisdiction over child welfare and protection matters, including what constitutes UCT and any practice standards relating to it.

Changes to Elements in Subpart B, Selection, Designation, and Duties of Accrediting Entities

Section 96.7 of the final rule retains the proposed revision in the NPRM requiring accrediting entities to retain all records relating to accreditation decision making for a period of 10 years. In response to comments, this final rule provides for the Secretary to extend the time accrediting entities must retain documents, but not shorten it to less than 10 years.

Section 96.8 of the final rule incorporates the proposed provisions establishing a new process for reporting accrediting entity fee schedule changes in the **Federal Register**.

The Department retained the proposed change to § 96.10 permitting a finding that accrediting entities are out of compliance for approving or accrediting an agency or person when the Secretary had to intervene and itself impose suspension, cancellation, or debarment of an agency or person.

Section 96.12 of the final rule retains the minor edits in the NPRM, but it remains in subpart C.

Changes to Elements in Subpart E, Evaluation of Applicants for Accreditation and Approval

In tandem with changes in section 96.7 as noted above, we retained in the final rule the proposed change to § 96.26 requiring accrediting entities to retain an accurate record of accreditation and approval decision making for at least 10 years, or longer if the Secretary requires it.

In § 96.27(e) the final rule incorporates a proposed change requiring accrediting entities to take into account in evaluating an application for accreditation or approval the reasons underlying a previous denial of accreditation or approval.

Changes to Standards in Subpart F, Standards for Intercountry Adoption Accreditation and Approval

We did not retain proposed changes to § 96.32 requiring agencies and persons to retain records related to the monitoring and oversight of supervised providers for a period of not less than 25 years. Several commenters expressed concern with the cost of implementing these provisions. On balance, the cost of creating and retaining such records for 25 years and potentially even longer could not be justified by the potential benefits.

Concerning the requirements in § 96.33(e) relating to the cash reserve of two months operating expenses, in the final rule we did not retain the proposed deletion of “financial resources” in this standard. Based on several public comments, we removed the reference to liquid assets. To avoid possible confusion or ambiguity as to these terms, the Department retained the existing CFR language in § 96.33(e).

Section 96.34 of this final rule mandates that compensation must not be unreasonably high but does not retain the proposed changes meant to take into account what services “actually cost.” Commenters found the proposed formulation too vague for accrediting entities to implement.

The Department accepted the recommendation by a commenter that several additional training topics be added to the list of topics in § 96.38. They relate to trauma-informed parenting, the impact of adoption on children already in the home, and parental support for children who experience discrimination based on race, physical, cognitive, and other disabilities.

Addressing questions raised in comments, section 96.41 of the final rule establishes that a complaint may be submitted by email, must include the name of the complainant and must be dated.

The final rule incorporates practical steps in § 96.47 for withdrawal of a home study recommendation that a family be found suitable to adopt abroad, including timelines for notifying adoptive parents, primary providers, and USCIS. The final rule does not retain proposed changes to § 96.52(a)(1) requiring extensive additional agency and person reporting to the Secretary

and the foreign Central Authority about “material facts” of intercountry adoption cases.

III. Section-by-Section Discussion of Comments

This section provides a detailed discussion of significant comments received and describes differences between the NPRM and this final rule.

Subpart A—General Provisions

Section 96.2 Definitions

1. *Comment:* Several commenters suggest edits to the proposed definition of “authorization” to clarify that such permission from a Central Authority is for the ability to provide adoption services generally and not just for one specific adoption. The commenters also recommend deleting the last sentence of the definition suggesting it goes beyond the scope of defining the term.

Response: The final rule does not retain the proposed definition of “authorization.” It also does not establish a standard for foreign authorization. Where foreign countries require authorization to provide adoption services, agencies and persons are obliged to be in full compliance with the laws of that foreign country in accordance with the new section 96.30(e) in the final rule. For additional information, see the discussion relating to section 96.29, below.

2. *Comment:* One commenter expresses concern that the proposed revision to the definition of “best interests of the child” does not sufficiently reflect the provision of section 503(a) of the IAA (42 U.S.C. 14953(a)) that defers to State law unless such provisions are inconsistent with the Convention or the IAA. The commenter is concerned the phrase “without reference to the law of any particular State” is in direct conflict with the IAA’s objective to defer to State law definitions whenever possible. The commenter recommends deleting this reference and if it is retained, that in addition to the Convention, a reference to the IAA should also be added. The commenter is also concerned that a reference to “the object and purpose of the Convention” could be interpreted to include provisions of other international conventions.

Response: The Department revised the definition of “best interests of the child” in the final rule to include a reference to the IAA, the UAA, and their implementing regulations to clarify that the revision does not include reference to any other international conventions. We have also removed the reference to “without reference to the law of a

particular State” because we believe the intent of the regulation is clear without this specific reference. The Department does not agree that the new definition is inconsistent with the IAA. The value of the revised definition is that it provides useful information to agencies and persons about how to approach making determinations of the best interests of a child when the child is outside of any State jurisdiction. The definition affirms the central concept that 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, “best interests of the child” shall have the meaning given to it by the law of the State.

3. *Comment:* Some commenters are concerned the definition of “best interests of the child” does not appropriately acknowledge the role played by central or competent authorities in making best interest determinations for children in countries of origin. The commenters note such determinations usually require judicial approval.

Response: The revised definition does not impose duties on public foreign authorities, who are expected to act in accordance with their own laws, regulations, and practices. In this final rule, to the extent that accredited agencies and approved persons contribute to decisions or actions abroad regarding best interests of the child, the revised definition reinforces how the determination should be made. Section 96.2 of the regulations specifically defines one of the six adoption services as “making non-judicial determinations of the best interests of the child and the appropriateness of an adoptive placement for a child.” The Department recognizes the role played by the competent authority but does not agree this definition in the final rule conflicts with the role played by central or competent authorities in making a best interest determination for children. Rather, it clarifies the guiding documents an agency or person should use when providing this adoption service outside of a State jurisdiction.

4. *Comment:* One commenter proposes adding other people who could be party to a service agreement in accordance with § 96.44 to the definition of “client,” namely, birth parents in outgoing adoption cases. This commenter also recommends including the child who is being adopted in an outgoing adoption in the definition of “client” in § 96.2.

Response: Based on the public comments, we have withdrawn the definition of “client.” We agree that

only referencing prospective adoptive parents in the definition of client with respect to a service agreement may be unnecessarily limiting, particularly with respect to outgoing adoptions. Given the possible different parties that could be included as clients for the services agreement with an agency or person, the Department is not including a definition of “client” in § 96.2 of the final rule.

5. *Comment:* Several commenters raise concerns about the addition of a new definition of “complaint” in § 96.2 and its impact on § 96.41, procedures for responding to complaints and improving service delivery.

Response: The final rule does not add a definition of “complaint.” For comments and responses relating to the proposed definition of “complaint” together with a discussion of comments relating to responding to complaints and related procedures, see § 96.41, below.

6. *Comment:* Two commenters note the Department proposed changes to the definition of “public foreign authority” by adding “a court or regulatory” before “authority operated by a national or subnational government of a foreign country” but did not propose similar changes to the definition of “public domestic authority.” The commenters object to the difference and are concerned the differences could cause confusion, particularly the proposed changes to the definition of public foreign authority.

Response: In response to these comments the Department is not including in the final rule the revisions to definitions of “public foreign authority” and “public domestic authority.” The Department does not want to create confusion between the definitions of “competent authority” and “public foreign authority” as used in sections 96.12 and 96.14 which could make it more difficult to determine which entities require supervision.

7. *Comment:* Several commenters recommend the Department revise its definition of “relative” by using instead the list of relative relationships found in 8 CFR 204.309(b)(2)(iii).

Response: This final rule retains the NPRM definition of “relative” in § 96.2. The Department believes the § 96.2 definition of relative serves a purpose entirely different from the definition of relative found in DHS regulations at 8 CFR 204.309(b)(2)(iii). Although there is significant overlap in the two definitions, their differences are also significant. See Appendix A at the end of this notice showing how the two lists of relative relationships overlap and how they differ in approach.

The DHS regulation at 8 CFR defines which pre-existing familial

relationships are exempt from the prohibition on prior contact between a prospective adoptive parent and the prospective adoptive child’s parents, legal custodian, or other individual or entity who is responsible for the child’s care. Additionally, the DHS regulation defines such relative relationships in terms of the prospective adoptive parent’s relationship with the parent of the child to be adopted. In contrast, the Department’s final rule definition of relative addresses relationships between the prospective adoptive parent(s) and the child to be adopted.

The relationships in the Department’s definition of relative in § 96.2 include first- and second-degree relatives: parents and siblings and grandparents, aunts, uncles, nieces and nephews as well as analogous relationships through marriage and adoption. These are all familial relationships that a primary provider can more readily document to determine whether a prospective adoptive parent has a qualifying relationship for the alternative procedures for primary providers in § 96.100. Relatives beyond the second degree such as great-grandparents, great aunts, great uncles and first and second cousins may still adopt relatives. However, primary providers in these cases would be required to develop a service plan for all six adoption services and implement that plan in accordance with § 96.44.

8. *Comment:* Commenters raised the concern that adoptive parents who adopt a child could assert a relative relationship with that child on the basis of its adoption and thus avail themselves of the alternative procedures for adoption by relatives in § 96.100.

Response: The relationships within the definition of “relative” in § 96.2 must exist between the prospective adoptive parent and the child prior to initiating an adoption to be able to take advantage of the provisions in § 96.100. For greater clarity, we revised the definition of “relative” as follows: “Relative . . . means a prospective adoptive parent was already, before the adoption, any of the following: parent, step-parent, etc. (emphasis added).”

9. *Comment:* One commenter is concerned that the addition of “person or” after “foreign” in the definition of “supervised provider” will cause ambiguity in the definition given that the phrase “person” is first referred to in the definition of supervised provider, without specific reference to “foreign.” The commenter suggests adding a reference to “domestic” in addition to “foreign” to clarify the definition.

Response: The Department has modified the definition of “supervised

provider” to provide clarity. We included “domestic or” before the word “foreign.”

10. *Comment:* Several commenters object to the phrase “intent on severing” in the proposed definition of “unregulated custody transfer” because it is ambiguous and does not explain how a parent’s intention should be determined. Another commenter argues that the definition is unconstitutional because it treats parents by adoption differently from biological parents.

Response: The final rule does not contain a definition of “unregulated custody transfer.” Given that the States have jurisdiction over child welfare and protection matters and that some States have already defined UCT, we defer to the States to determine what constitutes UCT rather than propose a definition in this rule.

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

Section 96.4 Designation of Accrediting Entities by the Secretary

1. *Comment:* Several commenters are concerned the proposed addition of “under § 96.5(b)” to § 96.4(c) will result in adoption service providers losing the choice to select the accrediting entity that conducts their accreditation or approval.

Response: Section 96.4(b) is unchanged in the final rule and permits the Secretary’s designation of an accrediting entity to include limitations on the accrediting entity’s geographic jurisdiction or impose other limits on the entity’s jurisdiction. For clarity, the final rule retains the minor proposed change in § 96.4(c), which connects the reference to a public entity in § 96.4(c) to the requirements relating to public entities in § 96.5(b).

Section 96.6 Performance Criteria for Designation as an Accrediting Entity

1. *Comment:* One commenter suggests the Department is revising § 96.6 to accommodate a specific accrediting entity.

Response: The Department made no changes in response to this comment. Rather than addressing any one specific entity, the requirements in § 96.6 outline the performance criteria any accrediting entity must demonstrate to the Secretary when it is seeking designation as an accrediting entity. The changes to § 96.6(c) and (d) clarify that an accrediting entity must demonstrate that it has the capacity to monitor and take appropriate adverse actions against agencies and persons, even if did not initially accredit or approve them. This change expands the performance criteria

that must be demonstrated by an entity seeking designation by the Department.

Section 96.7 Authorities and Responsibilities of an Accrediting Entity

1. *Comment:* A commenter noted in § 96.7(a)(4) that the Department changed the function of the accrediting entities from “investigating” complaints to “reviewing” complaints and asked for clarification of what review means in this context.

Response: The Department declines to further define “review” in the final rule. Clarification of the meaning of the term “review” is incorporated in the Memoranda of Agreement between the accrediting entities and the Department and figures prominently in the Department-approved accrediting entity policies and procedures relating to complaints.

2. *Comment:* Several commenters recommend the Department specify in the regulation that the Secretary could extend the time that an accrediting entity maintains all records related to its role as the accrediting entity.

Response: In response to these comments, § 96.7(a)(9) and § 96.26(d) of the final rule include a reference to “longer if” to clarify that ten years is the minimum amount of time for an accrediting entity to maintain its records, but the Secretary can extend it.

Section 96.8 Fees Charged by Accrediting Entities

1. *Comment:* Several commenters expressed the belief that the Department should require more transparency of an accrediting entity’s costs to perform functions authorized by the Secretary by requiring it to make available, upon request from the public, its demonstration of compliance with § 96.8(a).

Response: The Department is not changing the rule to mandate that accrediting entities demonstrate to the public compliance with § 96.8 as this regulation addresses the factors the Department will consider, pursuant to Section 202(d) of the IAA, in deciding whether to approve an accrediting entity’s proposed fee schedule. The language in the proposed rule for § 96.8(b) is the same in the final rule and requires the Department to publish proposed fee schedules in the **Federal Register** for public comment. The Department believes this will increase the transparency of an accrediting entity’s fee schedules, particularly proposed changes, while also adhering to the requirements in the IAA.

2. *Comment:* Several commenters suggest that fees charged by accrediting entities should be refundable for

services not rendered. Several commenters also recommend the Department add a provision prohibiting accrediting entities from charging additional fees for siblings.

Response: Section 96.8(c)(1) requires that the fees for accreditation and approval not be refundable. The Department is not changing this provision because we believe it protects an accrediting entity’s capacity to perform its roles and functions required by law and its agreement with the Department, while remaining consistent with Section 202(d) of the IAA. The Department does not agree that a new provision should be added to restrict the possible fee structure for an accrediting entity; however, we encourage interested persons to utilize the public comment process outlined in § 96.8(b).

Section 96.10 Suspension or Cancellation of the Designation of an Accrediting Entity by the Secretary

1. *Comment:* Several commenters propose adding the word “sufficient” in front of evidence in § 96.10(c)(1).

Response: The Department is not making any changes in response to this comment because we do not agree “evidence” needs to be qualified in this standard. The procedures outlined in § 96.10(b) provide the accrediting entity with an opportunity to demonstrate that suspension or cancellation by the Secretary is unwarranted, in accordance with the agreement with the Department pursuant to § 96.9.

Subpart E—Evaluation of Applicants for Accreditation and Approval

Section 96.25 Access to Information and Documents Requested by the Accrediting Entity

1. *Comment:* One commenter is concerned the proposed change to § 96.25 is overly broad and should specify that the intent of “deliberate destruction of documentation” is to prevent an accrediting entity from accessing the documentation. Several commenters indicate support for the change but are concerned an accrediting entity could take adverse action against an agency or person for following its own document retention and disposition policy. These commenters recommend that an accrediting entity be required to provide notice specifying which documentation and information the agency or person must retain.

Response: Section 96.25(c) permits an accrediting entity to take appropriate adverse action against an agency or person based solely on an agency or person failing to provide requested documents or information to an

accrediting entity. The final provision in § 96.25(c) permits an accrediting entity to take appropriate adverse action if the agency or person “engages in deliberate destruction of documentation or provides false or misleading documents or information” to an accrediting entity. An accrediting entity requires access to an agency or person’s information and documents to perform its functions authorized by the Secretary. Section 96.25(a) outlines the access and § 96.25(b) limits the accrediting entity’s access to Convention adoption files and cases subject to the UAA, with the exception of first-time applicants for accreditation or approval. The requirements in this regulation, along with § 96.42 on the retention, preservation, and disclosure of adoption records, provide sufficient information for an agency or person about the disclosure requirements to an accrediting entity.

With regard to adverse action, section 96.76 outlines the procedures governing adverse action by an accrediting entity. These procedures would guide an accrediting entity’s procedures for taking appropriate adverse action based on § 96.25(c).

The Department has modified § 96.25(c) in the final rule to clarify that the deliberate destruction of documentation relates to the documents or information requested by the accrediting entity that requires or requests the documentation to evaluate an agency or person for accreditation or approval and to perform its oversight, enforcement, renewal, data collection, and other functions.

Section 96.26 Protection of Information and Documents by the Accrediting Entity

1. *Comment:* Several commenters disagree with adding “foreign” to § 96.26(b) because they do not think an accrediting entity should make disclosures of information and documents to a foreign authority unless such disclosure falls into a circumstance outlined in § 96.26(b). The commenters suggest such disclosures to a foreign authority be coordinated through the Department of State.

Response: We have made a change to § 96.26(b) by removing the term “foreign” as recommended. This change clarifies that documents and information may not be disclosed by an accrediting entity to a foreign authority unless the disclosure meets the circumstances outlined in § 96.26(b)(1) through (3).

2. *Comment:* Several commenters are concerned § 96.26(d) would limit the requirements for an accrediting entity to

maintain accurate records. The commenters suggest this could weaken the Department of State's oversight of an accredited entity.

Response: Section 96.26(d), formerly the last sentence of § 96.26(c), clarifies the minimum period for an accrediting entity to maintain complete and accurate records of all information it receives related to an agency or person and the basis for accrediting entity decisions concerning the agency or person. The Department has made a change to clarify that the Secretary will only lengthen, not shorten, the requirement for an accrediting entity to maintain a complete and accurate record of all information it receives related to an agency or person, and the basis for an accrediting entity's decisions concerning the agency or person.

3. *Comment:* Several commenters suggest requiring an accrediting entity to disclose to an agency or person any information or records the accrediting entity uses as the basis of an adverse action.

Response: We did not make any changes in response to this comment. The Department did not propose changes to subpart K, which includes procedures and responsibilities of an accrediting entity for decisions leading to the imposition of adverse action.

Section 96.27 Substantive Criteria for Evaluating Applicants for Accreditation or Approval

1. *Comment:* Several commenters are concerned that removing the word "only" from § 96.27(c) would allow an accrediting entity greater flexibility and discretion, outside the scope of subpart F, when evaluating applicants for accreditation or approval.

Response: To avoid any confusion about how the standards are applied, we have not included the proposed changes to § 96.27(c) in the final rule.

Subpart F—Standards for Convention Accreditation and Approval

Section 96.29 Compliance With All Applicable Laws

1. *Comment:* Commenters object to the provisions in the proposed § 96.29(a) requiring that an agency or person has not provided any adoption service without accreditation or approval, or as an exempted or supervised provider. Commenters also object to the proposed requirement that an agency or person demonstrate it has not provided any adoption services in a foreign country without authorization. In addition, commenters point out that these prohibitions are not constrained in

time, not limited in terms of pre- or post-IAA or Convention, nor do they contemplate how agencies and persons must document their compliance.

Response: The Department is reorganizing the material in § 96.29 and has removed the proposed § 96.29(a) from subpart F. The provisions in the proposed § 96.29(b) are already included in § 96.25 where issues relating to an accrediting entity's access to information and documents are found. The parts of the proposed § 96.29(c) and (d) relating to compliance with the laws of jurisdictions where agencies and persons provide adoption services are now retained in § 96.30(e). For information about disposition of provisions in the proposed § 96.29 relating to foreign country authorization in line with Convention Article 12, see comment 4, below.

2. *Comment:* Several commenters are concerned with the provisions in the proposed § 96.29(d) concerning compliance with the laws of each jurisdiction in which an agency or person operates. They state that foreign laws are often vague or contradictory and compliance is difficult to achieve. Some also note that even when laws are clear, some countries of origin lack the infrastructure to act on them quickly enough to meet urgent needs of children waiting for intercountry adoption placements.

Response: The requirement for agencies and persons to act in compliance with all applicable laws tracks closely with the minimum requirements of the accreditation regulations in the IAA found in Section 203(b)(1)(F) (42 U.S.C. 14923(b)(1)(F)): "The agency has established adequate measures to comply (and to ensure compliance of theirs and clients) with the Convention, this chapter, and any other applicable law." To clarify the provisions relating to compliance with all applicable laws, the final rule includes the first sentence of the proposed language of § 96.29(d) as new section 96.30(e).

3. *Comment:* Several commenters note that even when laws in some countries of origin are known there may be different interpretations of laws as well as waivers or exceptions that may be informally permitted and unevenly administered. These factors make it difficult to determine compliance with applicable foreign laws. Commenters recommend that issues of compliance with foreign laws be referred to law enforcement, noting further their belief that it is not an accrediting entity role to unilaterally determine if an agency has violated a law. The commenters question the practicality of expecting

accrediting entities to have and maintain expertise in domestic and foreign law.

Response: The IAA gives accrediting entities the responsibility to assess agency and person substantial compliance with accreditation standards, which include requirements to comply with applicable foreign laws. Law enforcement concerns may emerge in the context of an accrediting entity's accreditation, approval, or monitoring and oversight of an agency or person and, where appropriate, the agency's or person's conduct may be referred to law enforcement entities for investigation and possible prosecution. The role of law enforcement is separate from that of an accrediting entity, which is to provide monitoring and oversight of an agency's or person's compliance with standards for accreditation and approval.

4. *Comment:* Several commenters observe that the proposed rule introduces a new standard in the proposed §§ 96.29(a), (c), and (d) requiring foreign country authorization to provide adoption services in countries requiring such authorization. They note that determining country of origin authorization requirements can be difficult.

Response: The Department removed the specific references to foreign country authorization in the final rule. However, if a country of origin requires authorization in the context of obligations under Article 12, an agency or person must obtain such authorization to comply fully with the laws of the foreign country where they or it operates.

Licensing, Compliance With Applicable Laws, and Corporate Governance

Section 96.30 State Licensing and Compliance With All Applicable Laws

The Department is revising the heading associated with this Section and adding § 96.30(e), formerly the first half of the proposed § 96.29(d).

Section 96.32 Internal Structure and Oversight

1. *Comment:* Many commenters oppose the proposed retention requirements for records relating to the selection, monitoring, and oversight of foreign supervised providers, financial transactions to and from foreign countries, and records relating to complaints. The commenters are concerned this new requirement will significantly increase the costs to an agency or person to comply with the new standard for document retention. Several commenters note § 96.42

includes the requirements for the retention, preservation, and disclosure of adoption records. The commenters note the retention requirement in § 96.42 for adoption records defers to applicable State law, which may require adoption records be retained permanently. Several commenters are also concerned that the change to the standard could violate State laws in some jurisdictions.

Response: In response to public comments, the final rule does not include the provision in § 96.32(c) of the NPRM. The final rule continues to require the agency or person to keep permanent records of the meetings and deliberations of its governing body and of its major decisions affecting the delivery of adoption services.

Financial and Risk Management

Section 96.33 Budget, Audit, Insurance, and Risk Assessment Requirements

1. *Comment:* Commenters want the term “liquid assets” removed from the proposed changes to § 96.33(e) because “liquid assets” are already included in the standard, as “liquid assets” are a type of asset. The commenters suggest using the term “or other assets,” which is inclusive of liquid assets.

Commenters are also concerned that emphasizing liquid assets will make it more difficult for smaller agencies and persons to keep sufficient assets liquid and in reserve.

Response: The final rule does not include the proposed reference to liquid assets. Also, the final rule does not retain the proposed deletion of “financial resources.” To avoid possible confusion or ambiguity as to these terms, the Department retained the existing CFR language in § 96.33(e).

2. *Comment:* Several commenters recommend the reserve requirement should apply only to an agency or person’s intercountry adoption work. These commenters note that it is more challenging for agencies and persons that operate non-adoption programs to meet the reserve requirement of the standard.

Response: We have not included limiting the cash and other asset reserves solely to an agency or person’s intercountry adoption programs. The reserve provisions are meant to protect prospective adoptive families by considering the financial viability of the entire organization, including where the agency or person engages in other work beyond intercountry adoption.

3. *Comment:* One commenter requests the Department clarify why it is moving the last sentences of § 96.33(e) to a new

section, § 96.33(f). The commenter notes if an agency or person ceases to provide or is no longer permitted to provide adoption services in intercountry adoption cases, the transfer plan required by the standard is not enforceable. The commenter notes agencies and persons are increasingly unwilling to accept transfer cases due to concerns that the agency or person may be found out of substantial compliance with the regulations. The commenter suggests the Department should play a greater role helping agencies and persons to transfer adoption cases and records.

Response: Section 96.33(f) remains unchanged from its formulation in the proposed rule. The standard requires an agency or person to have a plan to transfer its intercountry adoption cases if it ceases to provide or is no longer able to provide adoption services in intercountry adoption cases. Making a transfer plan benefits adoptive families in the process of adopting because it includes provisions for reimbursement to them of funds paid for services not yet rendered. For purposes of clarity, we have included this standard in its own section. The Department’s role when an agency or person is unable to transfer its intercountry adoption cases consistent with its plan is outlined in §§ 96.7 and 96.77.

Section 96.34 Compensation

1. *Comment:* Several commenters request clarification about the meaning of a “plan to compensate” in § 96.34(a). These commenters recommend that the Department use the phrase “or offers to compensate” to clarify the requirement of the standard.

Response: We have modified § 96.34(a) to clarify that any payment or offer of payment that includes an incentive fee or contingent fee for a child placed for adoption is not in compliance with this standard. The final rule broadens the requirement to ensure that any individual or entity involved in an intercountry adoption is not compensated with an incentive fee or contingent fee for a child located or placed for adoption. The final rule addresses known practices to circumvent this limitation on the payment of incentive and contingent fees.

2. *Comment:* In several sections of the proposed rule commenters expressed uncertainty of our meaning when we inserted the term “or entity” after the word “individual.”

Response: The Department made no change in response to the comments regarding use of the terms “individual” or “entity.” In their common usage, the

terms differentiate between a single person—an individual—and a group of individuals such as a corporation or agency—an entity. This distinction helps to clarify that the compensation limits in § 96.34 have broad application.

3. *Comment:* In § 96.34(d), commenters oppose the proposed formulation “what such services actually cost” in the country for lack of clarity, particularly regarding who determines what services actually cost in every country program. The commenters also point out that what a service costs is influenced by many factors, and that it will be difficult for an accrediting entity to determine actual costs given the variables involved.

Response: The standard in § 96.34(d) relates to avoiding unreasonably high fees, wages or salaries paid to directors, officers, employees, and supervised providers along with any other individual, or entity involved on behalf of an agency or person. The Department has not retained the proposed phrase “what services actually cost,” including instead “taking into account the country in which the services are provided and norms for compensation within the intercountry adoption community in that country, to the extent that such norms are known to the accrediting entity.” This standard provides several factors to consider in making such a determination including, the country, the location, number, and qualifications of staff, workload requirements, budget, and the size of the agency or person (such as a for-profit organization).

Ethical Practices and Responsibilities

Section 96.35 Suitability of Agencies and Persons To Provide Adoption Services Consistent With the Convention

1. *Comment:* A commenter requests clarification as to whether the new disclosure requirement in § 96.35(b)(6) relates to investigations by foreign authorities that are known to an agency or person.

Response: Section 96.35(b)(6) adds a new element to the disclosure requirement relating to any known past or pending investigations by foreign authorities.

2. *Comment:* A commenter raised a concern about a disclosure requirement in § 96.35(b)(7) that an agency or person must disclose “any instances where the agency or person has been found guilty of any crime under Federal, State, or foreign law . . .” The commenter pointed out that in some criminal cases a defendant may be permitted by the court to enter a plea of *nolo contendere* resulting in a conviction, but without

admission or finding of guilt. The commenter was concerned that an agency or person may have been convicted of illicit activity without being found guilty and would not be under obligation to disclose the conviction.

Response: The Department made no changes to this section. We decline to look behind the court's acceptance of the nolo contendere plea. Only those convictions in which an agency or person is found guilty of a crime requires disclosure under § 96.35(b)(7). We note that other parts of § 96.35, *i.e.*, paragraphs (b)(9) and (c)(1), may require disclosure of conduct of concern that leads to a conviction even without specifying guilt, or that is inconsistent with the principles of the Convention.

3. *Comment:* One commenter is concerned the proposed change in § 96.35(b)(9) from activities that "are" inconsistent with the principles of the Convention to activities that "may be" inconsistent could create ambiguity for an agency or person about the disclosures required by this standard.

Response: The Department removed the proposed changes to "may be" in §§ 96.35(b)(9) and 96.35(c)(4) replacing them with "are."

4. *Comment:* Commenters are concerned in § 96.35(c)(2) that the broader language requiring disclosure of employees with formal disciplinary actions or known investigations might be too broad because it would include employees who are not involved in the adoption process. One commenter suggests the new standard would require an agency or person to disclose to an accrediting entity any disciplinary actions, such as reporting late to work.

Response: The Department has revised the standard to revert to the language limiting the section to senior management positions but has retained the language adding formal disciplinary actions. Disciplinary action taken against employees at any level relating to lateness for work would fall outside the scope of these changes because they are not related to financial irregularities. Furthermore, the scope of these changes in this section is likely to reassure prospective adoptive parents that agencies and persons do due diligence across their entire organization to detect and address financial irregularities by senior management.

Section 96.36 Prohibition on Child Buying and Inducement

1. *Comment:* Some commenters are concerned the proposed changes to § 96.36(a) would restrict agencies and persons from remitting reasonable payments for activities related to the

adoption as outlined in the current § 96.36(a) as long as such payments are permitted by the child's country of origin and are not remitted as a payment or inducement to release the child. One commenter states that this change would prohibit an agency or person from making reasonable payments to address often severe medical needs for a child who had already been matched with prospective adoptive parents. The commenter notes that prohibiting such payment could be harmful to the best interests of a child.

Response: In response to these comments, the Department has revised § 96.36(a), reintroducing the deleted portion relating to "reasonable payments." We have also retained language in § 96.36(a) clearly prohibiting agencies and persons 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." As we noted in 71 FR 8063, February 15, 2006, "This standard, derived from the current, longstanding DHS regulations at 8 CFR 204.3, protects birth parents, children, and adoptive parents. Regardless of how adoption services fees are described, characterized, or classified, if the fee is remitted as payment for the child, or as an inducement to release the child, then the standard is violated and appropriate action may be taken against an agency or person." This standard is also consistent with DHS regulations at 8 CFR 204.304, which prohibit in Convention cases the improper inducement or influence of any decision concerning the placement of a child for adoption, consent to the adoption of a child, relinquishment of a child for purposes of adoption, or performance of any act by the child's parents that make the child eligible for classification as a Convention adoptee.

2. *Comment:* Commenters point out that the term "inducement" (found in both the current and proposed regulations at § 96.36(a)) is not defined in these regulations and suggests that the Department include a definition for this term that makes clear it would only be prohibiting "illicit" inducement.

Response: The Department made no changes in response to these comments. Inducement in the context of this rule and in the DHS regulations governing the intercountry adoption of children from non-Convention countries under section 101(b)(1)(F) of the Immigration and Nationality Act (INA) (8 CFR 204.3(i)) and governing Convention adoptions under INA 101(b)(1)(G) (8 CFR 204.304(a)) refer to "the act of

influencing an act or decision" and clearly encompasses the illicit conduct that the IAA and the Convention seek to eradicate. Whatever other benign meanings the term may have clearly do not apply here. The heading to § 96.36 already unambiguously employs the term "inducement," associating it with the term "child buying," leaving no question that "inducement" here refers to illicit conduct.

3. *Comment:* A commenter is concerned that the term "agent" has been too broadly interpreted and recommended we provide additional clarification.

Response: To refine the standard in § 96.36(b), the Department added the term "supervised" and removed the term "and agents" from the section. These changes are consistent with the definition of "supervised provider" in § 96.2, which makes clear that "agents" are encompassed in the meaning of supervised provider.

Professional Qualifications and Training for Employees

Section 96.37 Education and Experience Requirements for Social Service Personnel

1. *Comment:* One commenter is concerned with the reference to "counseling" in § 96.37(a) and recommends changing it to "assessment" to more accurately reflect the services provided by agencies and persons.

Response: Apart from adding a heading to § 96.37(a), the Department did not propose a substantive change to this standard. Section 96.37(a) applies to employees of an agency or person with appropriate qualifications and credentials to perform work requiring application of clinical skills and judgment. This standard does not require that an agency or person have employees that provide all of the adoption-related social service functions outlined in § 96.37(a), but it does require that if an agency or person uses employees for such functions, that any such employee have the appropriate qualifications and credentials to perform functions requiring clinical skills and judgment, counseling among them.

2. *Comment:* A commenter suggests that the proposed change to § 96.37 adding "training" to the standard is duplicative of the training requirements for social service personnel in § 96.38 and should be deleted.

Response: The Department has retained the proposed change to § 96.37(c) thus expanding the existing standard to include training in the

professional delivery of intercountry adoption services for the agency 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. This aspect of the standard is not addressed in other areas of the regulations.

3. *Comment:* One commenter requests clarification about why the Department proposes to include headings for § 96.37(a), (b), and (c) and if the headings provide a change to the meaning of the standard.

Response: Section 96.37 has four paragraphs with headings. The Department added headings to the other parts of the standard to enhance clarity, not to change the underlying meaning of the existing regulation.

Section 96.38 Training Requirements for Social Service Personnel

1. *Comment:* One commenter seeks clarification as to whether in accordance with § 96.38(d) an agency or person has the discretion to exempt newly hired employees as it relates to § 96.38(b). Also, the commenter thinks the use of the term "exemption" in the context of this section needs clarification.

Response: We have modified § 96.38(d) to make it clear that an agency or person may, but is not required to, exempt newly hired employees from elements of the orientation and initial training required in paragraphs (a) and (b) of this section. Such an exemption is only permitted if the newly hired employee was employed by an agency or person within the last two years and received the training requirements outlined in §§ 96.38, 96.39, and 96.40. Note that any exemption under § 96.38(d) is made solely by the employing agency or person, who have no need to seek such exemptions from another entity. We use this term "to exempt" or "exemption from" to mean "relieved from requirements" elsewhere in this or other training sections of the rule.

2. *Comment:* A commenter suggests adding in § 96.38(b) several new areas for training social service personnel and recommends adding several additional topics to the standard.

Response: The Department revised the list of topics to include additional training requirements for social service personnel.

3. *Comment:* A commenter asks why the Department employed the term "sociological . . . problems" in § 96.38(b)(7) and asked for clarification, particularly related to the proposed language related to the possibility that

such problems may not be reflected in the medical reports transmitted to prospective adoptive parents.

Response: The Department revised the final rule by removing the term "sociological" from § 96.38(b)(7), relying on the remaining elements of this section to inform training relating to medical and psychological problems experienced by children and the possibility that such problems may not be reflected in the medical reports transmitted to prospective adoptive parents.

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

Section 96.39 Information Disclosure and Quality Control Practices

1. *Comment:* Some commenters think the new provisions in § 96.39(a)(1) are unduly burdensome for agencies and persons to disclose detailed fee information about supervised and exempted providers to prospective adoptive parent(s) on initial contact.

Response: In response to these comments, the Department has made several revisions to § 96.39 in the final rule. The final rule requires an agency or person to fully disclose to the general public and prospective client(s) the supervised providers in the United States and in the child's country of origin with whom they can expect to work and the usual costs associated with their services.

Responding to Complaints and Records and Report Management

Section 96.41 Procedures for Responding to Complaints and Improving Service Delivery

1. *Comment:* Several commenters raise concerns that the new definition of "complaint" and the changes in § 96.41(b) will increase the number of complaints and require significantly more disclosures to the Department pursuant to § 96.41(f). Commenters also state that the proposed changes expand the scope of complaints and would require agencies and persons to accept complaints from any individual or entity, even about matters unrelated to their intercountry adoption practice.

Response: The Department withdraws the proposed definition of "complaint" and the proposed changes to § 96.41(b), retaining a reference to written or electronic and dated complaint submissions (by email or facsimile) in which the complainant is clearly identified. These changes recognize the validity of electronic forms of complaint and the value of complaints from birth parents, prospective adoptive parents,

adoptive parents, or adoptees. Tracking and summarizing the complaints received pursuant to § 96.41(b) provides useful information regarding trends to agencies and persons, accrediting entities, and the Department.

2. *Comment:* Several commenters object to removing the language in § 96.41(b) that agencies and persons accept complaints from a complainant "that he or she believes raise an issue of compliance with the Convention, the IAA, the UAA, or the regulations implementing the IAA or UAA." The commenters also raise concerns about the proposed definition of complaint in § 96.2, noting that its formulation used "may raise an issue of non-compliance with the Convention, the IAA, the UAA, or the regulations implementing the IAA and the UAA," was different from the reference in § 96.41(b) of "he or she believes raise an issue of compliance." The commenters are concerned that the use of "may raise" in the definition along with the perception that individuals and entities could submit complaints directly to the Department would sidestep the process for filing complaints outlined in §§ 96.69–71.

Response: To improve clarity, the final rule does not include a definition of complaint in § 96.2. The final rule includes the reference to and most of the revisions to § 96.41(b) (as noted in its response to comment 1, above) returning to the formulation "he or she believes raise an issue of . . ."

3. *Comment:* One commenter expresses concern that the changes to § 96.41(b) and to the new definition of complaint would permit complaints filed by anyone electronically without identifying the complainant. As written, this commenter thinks the changes would encourage anonymous complaints and that agencies and persons would be required to, but unable to, respond to such complaints.

Response: In the final rule, the Department provides for electronic submission of complaints without a written signature to facilitate use of electronic means of communication while at the same time adding clear requirements to the standard in § 96.41(b) that each complaint must be dated and identify the complainant.

4. *Comment:* A commenter believes provisions in the proposed complaint definition allow for filing complaints directly with an accrediting entity, the Department, and even the Complaint Registry, which would create a direct contradiction to §§ 96.69(b) and 96.71(b)(1). Section 96.69(b) requires complainants who are parties to a specific intercountry adoption case to first file a complaint and attempt to seek

resolution with an agency or person before filing with the Complaint Registry.

Response: We have withdrawn the new definition of complaint from the final rule, which removes the changes noted above that the commenter found suggestive of being contrary to the complaint procedures found in §§ 96.69 and 96.71.

Section 96.42 Retention, Preservation, and Disclosure of Adoption Records

1. *Comment:* One commenter, while not opposed to the revision, asked why it was necessary to include a reference to State law in § 96.42(b).

Response: The Department added a reference to State law because the proposed rule broadens the disclosure requirements by deleting “non-identifying” from “information.” Section 401(c) of the IAA mandates that applicable State law govern the disclosure of adoption records and State law may limit the information an agency or person may make available to an adoptee or adoptive parent(s) of minor children.

Section 96.43 Case Tracking, Data Management, and Reporting

1. *Comment:* Several commenters request the Department add “whenever possible . . .” for information and reports on disruptions in § 96.43(b)(3) as it is in the rule for dissolutions in § 96.43(b)(4). The commenters maintain obtaining the requested information is difficult, particularly when adoptive parents are unwilling to provide the information to the agency or person.

Response: In response to public comments, the final rule reflects the removal of all proposed changes to § 96.43. Cooperation between the Department, the accrediting entities, and agencies and persons in recent years with regard to adoption instability matters, including reporting on disruption cases, has proven to be robust and effective. The proposed expanded reporting for disrupted placements includes information that is often already provided by agencies and persons reporting on disrupted placements.

2. *Comment:* Several commenters note that removing the phrase “set forth in the country of origin,” in § 96.43(b)(6) significantly broadens the scope of information agencies and persons will be required to provide the Department. The commenters also note agencies and persons would need time to comply with the reporting requirement due to the proposed significant changes to § 96.40.

Response: The final rule reflects the removal of all proposed changes to § 96.43 and continues to reflect the annual reporting requirement in section 104(b)(7) of the IAA. (42 U.S.C. Ch 143 § 14914 (b)(7)).

Service Planning and Delivery

Section 96.45 Using Supervised Providers in the United States

1. *Comment:* Several commenters are concerned with the proposed changes in § 96.45(a)(2) requiring supervised provider compliance with the Convention, the IAA, the UAA, and their implementing regulations. One commenter thinks the proposed regulation is overly broad and tantamount to requiring supervised providers to become accredited to comply with the standard. The commenter recommends limiting the provision as follows: “In providing any adoption service, complies with the relevant section of the Convention, the IAA, the UAA, and regulations implementing the IAA and UAA for the adoption service being provided.”

Response: The Department modified the final rule to reflect this suggested language.

2. *Comment:* One commenter, pointing to proposed changes to § 96.45(b)(9), is concerned the changes would expose a supervised provider in the United States to requests for information from accrediting entities with no jurisdiction over the accreditation or approval of the primary provider. Such inquiries would be burdensome and lack authority.

Response: In response to this comment, the Department is adding clarifying information about a requesting accrediting entity’s jurisdiction. With more than one accrediting entity, an accrediting entity could be responsible for monitoring and oversight of a primary provider, even though it was not the accrediting entity to issue the primary provider’s accreditation or approval. The final rule reflects this requirement for supervised providers to respond to an accrediting entity’s request for information. However, we have modified the rule to add “. . . or an accrediting entity with jurisdiction over the primary provider” to § 96.45(b)(9) to clarify that the requesting accrediting entity must have jurisdiction over the primary provider.

Section 96.46 Using Providers in Foreign Countries

1. *Comment:* Commenters remarked that the proposed rule stated the Department would not propose changes to the regulations relating to foreign

supervised providers but in fact made a few changes to § 96.46.

Response: The Department noted in its preamble to the proposed rule³ that it was not addressing regulatory changes to accreditation standards relating to foreign supervised providers. Instead, the preamble pointed to a consultative process with stakeholders to address a wide range of related standards. Most of the changes introduced in the proposed rule in § 96.46 were minor corrections or clarifications. The one substantive change in this section, found in § 96.46(b)(7) and (8), requires the primary provider to include in the agreement with foreign supervised providers that the foreign supervised provider’s fees and expenses will be billed to and paid by the client(s) through the primary provider. This change prohibits foreign supervised providers from requiring direct payments for adoption services abroad from prospective adoptive parents, which would expose them to potential abuses such as overcharging.

2. *Comment:* A commenter points out the benefit of requiring all foreign fees to be paid through the primary provider to mitigate the potential for fraud and illicit financial practices, but also notes the need to preserve provisions lost to the removal of § 96.46(b)(8), provisions for refundability of fees paid overseas.

Response: The Department included in the final rule a provision in § 96.46(b)(7) requiring the primary provider to provide a written explanation of how and when such fees and expenses will be refunded if the service is not provided or completed and will return any funds collected to which the client(s) may be entitled within sixty days of the completion of the delivery of services.

3. *Comment:* Several commenters recommend removing the new provisions in § 96.46(b)(7). They think requiring primary providers to bill prospective adoptive parents for and pay fees directly to foreign supervised providers is inefficient and would unnecessarily add administrative costs to prospective adoptive parents for making wire transfers on their behalf. The commenters observe this would limit families using other payment options open to them such as domestic wire transfers or domestic checking. These commenters recommend allowing prospective adoptive families to take care of their own wire transfers to pay for fees in country, including those due to foreign supervised providers. Other commenters question the stated premise on which the change was based, namely

³ 85 FR 74497, November 20, 2020.

that it was meant to protect adoptive families from transporting large sums of cash to countries of origin. These commenters argue that transporting cash to is no longer standard practice and that adoptive families typically use bank wire transfers instead.

Response: The Department retained the changes in § 96.46(b)(7) in the final rule. This standard applies only to fees and expenses related to providing adoption services. These services are enumerated in the supervisory agreement between the primary provider and the foreign supervisor, pursuant to § 96.46(b)(1). Fees and expenses for other services in the country of origin may be paid for directly by prospective adoptive parents. The elements in this standard reinforce in an important way the supervisory relationship between primary providers and foreign supervised providers as they require active primary provider oversight of the receipt and expenditure of funds relating to adoption services provided abroad.

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

Section 96.47 Preparation of Home Studies in Incoming Cases

1. *Comment:* A commenter recommends deleting “counseling” from § 96.47(a)(3). The commenter thinks this change would bring § 96.47(a)(3) into closer alignment with 8 CFR 204.311(c)(5), (c)(8), (c)(9), and (g)(4).

Response: In response to this comment, the Department revised § 96.47(a)(3) to include the language “preparation” in addition to “counseling” and “training.” Counseling, where indicated, may inform the home study, whether provided by a home study preparer licensed to provide formal counseling, or when the family is referred to a different professional licensed to provide it. Preparation would include a wide variety of work provided by the home study preparer short of formal counseling for which a separate license would be required.

2. *Comment:* Several commenters are concerned about the requirement in § 96.47(e)(1) to inform the prospective adoptive parent(s) prior to USCIS if the agency or person withdraws its recommendation of the prospective adoptive parent(s) for adoption. In their view, to provide for the child’s safety, it may be in the best interests of the child to notify USCIS first.

Response: The Department made no revisions to the order in which agencies and persons must notify prospective adoptive families and USCIS of their withdrawal of a recommendation in favor of the family adopting. We did add the primary provider as an additional entity to notify, if appropriate. The notification requirements in § 96.47(b)(1) and (2) allow expeditious notification of prospective adoptive parents and USCIS. An agency or person is not required to wait five business days to provide adoptive families with written notice of the withdrawal, just that it do so within five business days of its decision to withdraw. Likewise, the regulation does not insist that an agency or person wait five days before notifying USCIS. In practical terms, once the agency or person decides to withdraw its recommendation of the family to adopt, it can notify the family in writing immediately following the decision and can notify USCIS in writing immediately thereafter, causing no delay that would be contrary to the best interests of the child.

3. *Comment:* A commenter is concerned that § 96.47(e) is unclear as to what involvement and responsibilities a primary provider would have if it was not the entity that conducted or approved the home study.

Response: The Department is revising § 96.47(e) to include notification of the primary provider in the case. Because the primary provider as identified in § 96.14 is responsible for ensuring the six adoption services are provided in an intercountry adoption case as provided in § 96.44, notification is essential to its ability to perform its overarching function in the case. We also revised § 96.47(e)(1) in the final rule to require the agency or person, if applicable, to make reasonable efforts to also notify the primary provider of its withdrawal of any approval of the home study.

4. *Comment:* Many commenters recommend the Department remove “good cause” from § 96.47(e)(3).

Response: The Department removed the reference to “good cause” from the final rule and revised § 96.47(e)(3) to require that an agency or person maintain written records of the withdrawal of its recommendation and/or approval, the step(s) taken prior to reaching such a decision, and the reasons for the withdrawal.

5. *Comment:* Several commenters believe the proposed language in the proposed § 96.47(e)(4) and (5) is repetitive of other provisions applicable to home studies and should be omitted.

Response: The Department removed § 96.47(e)(4) and (5) from the final rule in response to these comments.

Section 96.49 Provision of Medical and Social Information in Incoming Cases

1. *Comment:* A commenter requests the Department revise the reference to videotape and photograph to video and photo to make it clear the standard also includes digital videos and photographs.

Response: The Department replaced all references to the term “videotape” with the term “video” in § 96.49 in the final rule but did not revise the term “photographs.” The Department believes the term “photographs” is inclusive of photographs taken with film or digitally.

§ 96.51 Post-Adoption Services in Incoming Cases

1. *Comment:* Several commenters are concerned that a dissolution could occur years after the adoption is finalized and any cost schedule would be obsolete. In addition, there are concerns this regulation would force ASPs to be experts in the laws of all 50 states where a dissolution could take place.

Response: The Department did not retain a requirement to provide the cost for post-adoption services for all agencies and persons. The rule requires agencies and persons to inform prospective adoptive parents whether post-adoption services will be provided. Section 96.40 requires agencies and persons, before providing any adoption services, to provide expected total fees and expenses for post-placement and post-adoption reports. The Department encourages agencies and approved providers to assist adoptive families by providing post-adoption services where possible. Section 96.51(c) requires agencies and persons to provide post-adoption reporting in the adoption services contract if such reporting is required by a child’s country of origin.

Section 96.52 Performance of Communication and Coordination Functions in Incoming Cases

1. *Comment:* Several commenters note the proposed changes in § 96.52(a)(1) would significantly increase reporting requirements for agencies and persons and that the new reporting requirements to U.S. and foreign Central Authorities are either already part of other reporting standards or not required by foreign authorities.

Response: In response to the comments about the proposed changes to § 96.52(a)(1), the final rule reflects removal of the proposed new requirements in § 96.52(a)(1).

2. *Comment:* One commenter notes the addition of “including any updates

and amendments” to § 96.52(b)(1) should be further clarified by adding “when requested or required” by the relevant Central Authority. The commenter is concerned that if the Central Authority does not require such updates, the additional information could overwhelm Central Authorities and add costs for clients if the updates or amendments require translation.

Response: In response to this comment, the Department revised § 96.52(b)(1) to include “any updates required by such competent authorities in the child’s country of origin.” Agencies and persons must provide Central Authorities with the most up-to-date suitability information on the prospective adoptive parent(s).

3. *Comment:* One commenter notes the requirements under § 96.52(b)(4) is an action performed by the Department, not the agency or person, and should be deleted.

Response: The Department did not delete this section. Section 96.52(b) retains the flexibility of the phrase “the agency or person takes all appropriate measures, consistent with the procedures of the U.S. Central Authority and the foreign country.” The Department has revised the final rule to clarify that this action could be to “confirm that this information has been transmitted to the foreign country’s Central Authority or other competent authority by the U.S. Central Authority.” Providing this communication and coordination is important to ensuring that the Convention process is followed and to avoid unnecessary delays in the process.

4. *Comment:* One commenter observes that the requirement of § 96.52(d) is about an outdated practice related to the cost of replacing hard copies of home studies. The commenter notes this requirement of returning an original home study and/or the original child background study to the authorities that forwarded them is unnecessary.

Response: The Department revised this standard in the final rule relying on agencies and persons to determine the appropriate course of action for disposition of case documents in the event the transfer of the child does not take place. Factors to consider include but are not limited to, the specific requirements, if any, of competent authorities in either the State or in the receiving country and the preference of prospective adoptive parent(s) to continue pursuing an adoption.

5. *Comment:* One commenter notes § 96.52(e) is overly broad and that a violation of any standard in Subpart F would also include a violation of § 96.52(e).

Response: We have made no changes in the final rule in response to this comment about section 96.52(e). This final rule clarifies that the obligation in § 96.52(e) only applies to requirements that the Secretary has identified under existing authorities and made known (directly or via an accrediting entity) to agencies and persons.

Standards for Cases in Which a Child is Emigrating From the United States
Section 96.55 Performance of Convention Communication and Coordination Functions on Outgoing Convention Cases

1. *Comment:* One commenter is concerned that in § 96.55(c) the use of the word “original” in this context is outdated and asks why this standard only applies to the home study and child study and not other documents.

Response: The requirement in § 96.55(c) derives from Article 19(3) of the Convention, which provides that: “If the transfer of the child does not take place, the reports referred to in Articles 15 (home study of prospective adoptive parents) and 16 (child background study) are to be sent back to the authorities who forwarded them.” The final rule allows accredited agencies and approved persons to meet this Convention obligation by considering the specific requirements, if any, of competent authorities in either the U.S. State or in the receiving country and the preference of prospective adoptive parent(s).

Subpart L—Oversight of Accredited Agencies and Approved Persons by the Secretary

Section 96.83 Suspension or Cancellation of Accreditation or Approval by the Secretary

1. *Comment:* Several commenters note their support of the due process elements of the revisions in § 96.83(b) governing suspension and cancellation of accreditation by the Secretary and requested the same due process be given to agencies and persons when an accrediting entity imposes adverse action.

Response: The Department made no changes to the regulations in response to these comments. The circumstances associated with suspensions and cancellations by the Secretary under § 96.83 are more likely to involve complex fact patterns and emergent situations than the broader range of adverse actions imposed by an accrediting entity pursuant to subpart K. The revisions to § 96.83(b) include more detailed notice provisions warranted by the circumstances in such cases.

2. *Comment:* Commenters point out as written, § 96.83(c) mandates notification to entities including the Hague Permanent Bureau, State licensing authorities, Central Authorities where the agency or person operates, and other authorities as appropriate, of the Secretary’s decision to suspend or cancel accreditation, seemingly before that decision has become final. Commenters request that the § 96.83(c) notifications occur only after the disclosures made to the agency or person at the time of the Secretary’s written notice of its decision to suspend or cancel and after the process in § 96.84(a) and (b) permitting rebuttal of the decision on the facts.

Response: The Department made no changes to § 96.83(a) requiring the Secretary to suspend or cancel the accreditation or approval when s/he finds the agency or person is substantially out of compliance with the standards in subpart F, nor to notification of suspension or cancellation pursuant to § 96.83(c). There is no expectation of delay of the effect of suspension or cancellation and no provision similar to § 96.77(a) by which the Secretary could delay the effect of suspension or cancellation. Furthermore, the provisions in § 96.84 allowing for withdrawal of suspension or cancellation by the Secretary assume the suspension or cancellation has already been notified pursuant to § 96.83(c) and provides for notification to the same authorities of the withdrawal.

Section 96.88 Procedures for Debarment With Prior Notice

1. *Comment:* Commenters request that in the proposed § 96.88(a), the Department provide additional information on the rationale for standard-specific non-compliance determinations.

Response: The Department made no changes in response to these comments. The rationale for standard-specific non-compliance is demonstrated through conduct-specific information provided pursuant to § 96.88(a)(2). The two sections 96.88(a)(2) and 96.88(a)(3), in conjunction, will provide sufficient notice to agencies and persons to provide transparency and clarity to the adverse action notification process.

2. *Comment:* Several commenters are concerned the time allotted for the Department to respond to an agency’s response to a notice of debarment hearing in the proposed § 96.88(b) and (c) precludes the agency or person from a meaningful response and allows the Department to gather additional or different evidence than was originally

relied upon without the agency having a similar opportunity. Similarly, commenters wonder why agencies and persons would not be entitled to conduct discovery.

Response: The Department made no changes in response to this comment. As noted in the proposed § 96.88(c)(5), the procedures for debarment in § 96.88 are informal and permissive; the hearing officer may accommodate reasonable variations in the process. Information developed from all sources becomes part of the record and is available to all parties. Although there is no right to subpoena witnesses or conduct discovery, the agency or person may testify in person, offer evidence on its own behalf, present witnesses, and make arguments at the hearing. Taken together, these features offer a sound basis for an effective and fair proceeding.

3. *Comment:* One commenter is concerned that the Department, while permitting agencies to provide witnesses, may undermine that right by denying a visa to a foreign citizen willing to testify.

Response: The Department has included the option for testifying via teleconference or to accept an affidavit or sworn deposition testimony at the discretion of the hearing officer if any witness is unable to appear. Obtaining a visa to appear in person should not prevent a witness in a foreign country from providing testimony in a debarment hearing. All testimony becomes part of the written record, the only record to be reviewed by the Secretary to make a debarment decision.

4. *Comment:* Citing the intent of Congress as stated in Senate Report 106–276 that the Secretary may take enforcement actions only after the established avenue of enforcement by the accrediting entity has been found wanting, one commenter recommends that any written notice of a debarment hearing explain why the accrediting entity with jurisdiction is not taking action in the case.

Response: The Department made no change to the regulation in response to this comment and notes that the cited Senate Report comments on the Secretary's authority in IAA Section 204(b) to suspend or cancel accreditation decisions by accrediting entities. The procedures in § 96.88 relate to IAA Section 204(c) Debarment. Debarment is an exceptional proceeding outside of other enforcement actions established by the IAA, justified by circumstances that warrant exceptional action, *i.e.*, when “there has been 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.” IAA Section 204(c)(1)(B), (42 U.S.C. 14924(c)(1)(B)). In this situation, the Congress provided authority for the Secretary to institute debarment proceedings on the Secretary's own initiative and independent of action by an accrediting entity, though an accrediting entity may request or recommend the Secretary debar an agency or person.

Section 96.90 Review of Suspension, Cancellation, or Debarment by the Secretary

1. *Technical Correction:* The Department addresses in § 96.90(b) judicial review of final decisions by the Secretary pursuant to IAA Section 204(d) (42 U.S.C. 14924(d)). We erroneously stated in our proposed rule that if the petition to Federal Court raises an issue “whether the deficiencies necessitating a suspension or cancellation have been corrected,” the agency or person must first exhaust the procedures pursuant to § 96.84(b). The referenced procedures are found instead in § 96.84(c). We made this correction in the final rule.

2. *Comment:* Several commenters are concerned with the provisions in § 96.90(b) requiring, under certain conditions, that agencies and persons exhaust the process in § 96.84(c) before seeking judicial review. The commenters think this requirement exceeds the Department's authority to limit judicial review.

Response: The Department has made no changes to the provisions in § 96.90(b). IAA Section 204(b) (42 U.S.C. 14924(b)) provides for agencies or persons to petition a Federal Court to set aside the Secretary's final suspension, cancellation, and debarment decisions. Section 96.84(a)–(b) and § 96.84(c) provide two distinct processes to seek the Secretary's review of their suspension and cancellation decisions: Section 96.84(a)–(b) provides for a time-limited basis for filing with the Secretary a statement along with supporting materials as to why the decision was unwarranted and an internal review on the merits. Section 96.90(b) also denotes at what point a decision becomes final and thus reviewable in Federal Court. Section 96.84(c) is different in character from and operates independently of questions of “unwarrantedness.” Section 96.84(c) executes the Secretary's authority in IAA Section 204(b)(2) (42 U.S.C. 14924(b)(2)) to terminate a suspension or permit reapplication in the case of

cancellation, “at any time when the Secretary is satisfied that the deficiencies on the basis of which adverse action is taken under paragraph 1 have been corrected. . . .” Petitions under this section may be made regardless of whether the Secretary has made a final decision of suspension or cancellation pursuant to § 96.84(a) and (b) and IAA Section 204(d) (42 U.S.C. 14924(d)). Far from limiting an agency or person's right to judicial review in such instances, § 96.90(b) streamlines that review process by allowing the Secretary to resolve first the issue the IAA assigns her/him to resolve. The decision to terminate suspension or cancellation pursuant to § 96.84(c) is not a final decision subject to judicial review pursuant to IAA Section 204(d).

Subpart M—Disseminating and Reporting of Information by the Accrediting Entities

Section 96.92 Dissemination of Information to the Public About Accreditation and Approval Status

1. *Comment:* One commenter thinks the proposed deletion of § 96.92(b) will weaken the requirement for an accrediting entity to make information available to the public about an agency or person's accreditation and approval status. However, the commenter also notes the revision to § 96.92(a) will require an accrediting entity to make information available more regularly than the current quarterly requirement.

Response: Subpart M is intended to help prospective adoptive parent(s) make informed decisions about accredited agencies and approved persons. The final rule requires an accrediting entity to provide information about agency and person activities in § 96.92(a) more frequently, at least monthly rather than quarterly. The final rule retains § 96.92(b), formerly § 96.91(b), in order to maintain the requirement for an accrediting entity to provide such information upon specific request to individual members of the public. The final rule retains the addition of “including, where relevant, the identity and conduct of any foreign supervised provider” to assist prospective adoptive parents to make more informed decisions about the selection of an agency or person.

Subpart R—Alternative Procedures for Primary Providers in Intercountry Adoption by Relatives

§ 96.100 Alternative Procedures for Primary Providers in Intercountry Adoption by Relatives

1. *Comment:* Several commenters welcome the effort to provide

regulations relating to adoption by relatives. Others expressed reservations that the proposed regulation will not produce the anticipated result of streamlining the process.

Response: The Department made no changes to the proposed regulations in Subpart R except for withdrawing § 96.100(d) and renumbering Section 96.100(e) to become the new § 96.100(d). We agree with one commenter's statement that the relative adoption regulations balance services provided by close family members and services for which the primary provider is responsible. By limiting the required number of adoption services the primary provider must provide, the agencies or person's time commitment to such cases may be reduced, which is likely to reduce the cost of the services they provide in such cases.

2. *Comment:* Some commenters are concerned the new provisions are not sufficient to overcome the perceived risks to families and to agencies and persons for providing limited adoption services in relative cases. These commenters noted that providing adoption services 5 (post-placement monitoring) and 6 (disruption before final adoption) from the United States is difficult and it is unrealistic to expect an agency or person would have the capacity, knowledge, or relationships to effectively monitor a placement or be able to support the parties involved in a disrupted placement.

Response: As envisioned by the IAA, adoption services 5 and 6 are important pieces of the regulatory process to protect the interests of children, birth parents, and prospective adoptive parents in intercountry adoption cases. Protecting those interests is no less a feature in the alternative procedures for intercountry adoption by relatives, and the final rule reflects this reality. Circumstances in each adoption case may vary and demand the primary provider's judgment and expertise with post-placement monitoring and transfer of the child to the custody of the adoptive family.

3. *Comment:* Several commenters point out the importance of training for prospective adoptive parent(s) in relative adoption cases but note the training elements in § 96.48 were not tailored to prepare adoptive families for adoption by relatives.

Response: The Department made no changes to § 96.48 (preparation and training for prospective adoptive parents) in the final rule with respect to adoption by relatives. We agree prospective adoptive parent(s) adopting relatives will benefit from pre-adoptive training and preparation and that some

parts of the training outlined in § 96.48 may be more relevant to the relative adoption context than others. See the plans for review of § 96.48 in paragraph II.E. of this preamble.

IV. Timeline for Implementing Changes in the Final Rule

All changes in the final rule, including those related to the new alternative procedures for adoption by relatives abroad in subpart R, become effective 180 days after publication of the final rule in the **Federal Register**.

V. Regulatory Analysis

Administrative Procedure Act (APA)

Consistent with the requirements in Section 203 of the Intercountry Adoption Act, as amended, the Department is issuing this final rule after having provided a period of public notice and comment on the rule in an NPRM published November 20, 2020.

Regulatory Flexibility Act/Executive Order 13272: Small Business

This section considers the cost to small business entities of the changes to the accreditation regulations in this final rule 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). The IAA in section 203(a)(3) (42 U.S.C. 14923(a)(3)) provides that subsections (b), (c), and (d) of 5 U.S.C. 553 apply to this rulemaking. Consistent with the Regulatory Flexibility Act, we prepared a final regulatory flexibility analysis, which requires the following elements:

(1) A Statement About the Need for and Objectives of the Rule

We refer the reader to the supplemental information on the final rule at the top of this preamble, which summarizes what we set out to accomplish in this final rule.

(2) A Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA), a Statement of the Assessment of the Agency of Such Issues, and a Statement of any Changes Made in the Proposed Rule as a Result of Such Comments

The public comments addressed the content of our IRFA, both in general terms and in comments directed to specific proposed changes. Some commenters were concerned that the

cumulative impact of the proposed changes to our accreditation rule would result in increased costs to agencies and to fees charged to families. This was the most consistent concern. Some commenters thought that our estimated costs of implementation were low or did not consider some of the tasks they felt were essential to implementing the proposed changes. Of the Department's roughly 170 proposed edits and substantive changes to the accreditation rule, nearly half received no public comments. For the most part, these were minor edits or corrections to the regulation text, with no impact on the cost of implementation. We incorporated these changes into the final rule.

For the proposed changes about which stakeholders provided comments, we evaluated them first on the basis of substance, *i.e.*, what was the commenter trying to communicate about the proposed rule, and how did that align with our underlying statute, the IAA, and the Convention? Did the commenter propose a change we had not previously considered? How did the proposed change impact other parts of the regulations?

Subsequent to these considerations on substance we considered the cost to agencies and persons of implementing the commenter-proposed regulatory changes: If a proposed change was incremental, was the cost to implement also small? Or would a proposed change increase implementation costs but significantly enhance the regulation's ability to promote the child and family protection objectives of the IAA and the Convention? These inquiries helped us balance the impact of commenter-proposed changes on substance and costs in our final rule. The section-by-section discussion of significant comments in preamble section III demonstrates this analytical approach.

Significant Comments: Here are a few examples of significant public comments by commenters seeking relief from changes to the accreditation regulations they found too costly, too burdensome to implement.

(a) Standards Related to Adoption Placement Disruption Reporting

In section 96.50, which deals with agency and person responsibilities when a placement disrupts prior to the final adoption, our proposed changes strengthened standards for agency or person action when a disruption occurs.

Commenters recommended reducing or eliminating many of the changes, which they found overly burdensome to implement. Our policy priority remains to enhance protection of children who

are the most vulnerable when a disruption occurs. We believe it may be possible to develop a more streamlined standard on disruption reporting that minimizes costs while enhancing protection for children in these cases. We withdrew proposed changes to § 96.50 to gain a better understanding of stakeholder perspectives through consultation before proposing changes relating to disruption reporting.

(b) Standards Relating to Making Direct Payments to Orphanages or Other Entities for Children Pending Adoption

In the proposed rule in section 96.36 (a), we prohibited direct payments to birth parents, individuals, orphanages, or other institutions for the benefit of specific children and birth parents. Direct support payments by adoption service providers, their employees, and agents for specific child welfare activities, if permitted by the country of origin, has long been the subject of deep controversy among international child welfare and adoption experts. Our challenge is to sufficiently regulate the financial aspects of intercountry adoption to best mitigate the risk of these payments being diverted to support illicit practices directly or indirectly. Illicit practices we seek to avoid include, among others, recruiting children into institutions or child buying for purposes of intercountry adoption, or incentivizing institutions to retain children longer than necessary. Commenters argued strongly that this approach would be prejudicial to the best interests and wellbeing of children and noted in particular the importance of supporting children with medical conditions that require immediate attention that might not otherwise be possible without direct financial

support. We found these arguments to be persuasive but remain deeply concerned about the possible diversion of these funds to illicit practices, which threaten the viability of intercountry adoption as a whole in addition to putting at risk the best interests and wellbeing of children. Our solution was to withdraw the prohibitions against making payments for child welfare and child protective services, while at the same time enhancing the standards for recordkeeping to increase oversight of the use of those funds. On balance, we wanted to respect the views of commenters about the value of providing targeted funds for child welfare and protective services in the period between matching and adoption, while imposing effective controls tracking the use of those funds.

(c) Standards Relating to Disclosure of Fees To Be Paid by Prospective Adoptive Parents

We decided to withdraw, pending further stakeholder consultation, proposed changes in section 96.40 that would broadly restructure the way adoption service providers report fees to the public. The public comments argued strongly not to implement these changes because of the high cost associated with implementation. Many commenters thought the new structure did not adequately represent the way adoption service providers categorize fees and estimated expenses for prospective adoptive parent(s), nor did it address practical barriers to implementing the new structure. We believe strongly in achieving greater transparency in adoption service provider fees while taking seriously concerns that the cost of implementation would be higher than we had assessed. This is another area in

which we believe additional stakeholder consultations are required to identify viable solutions before moving forward with any changes to the regulations.

(3) A Description of the Comments Filed by SBA

The Chief Counsel for Advocacy of the Small Business Administration did not provide comments to our proposed rule.

(4) A Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

Table 1 summarizes the number of adoption service providers accredited or approved to provide adoption services in intercountry adoption cases. As of July 2022, there were 84 accredited or approved firms. Of those firms, 72 are small business entities according to the definition of the North American Industry Classification System (NAICS), which the SBA relies on to define small business firms. Different industries define small business firms differently. NAICS Code 624110 is the industry code for Child and Youth Services and includes establishments such as adoption agencies or entities that provide child adoption services. NAICS code 624110 defines small firms as those with gross revenues of up to \$15.5 million. We established agency and person annual gross revenues or receipts from their public filings of IRS form 990. Six firms are not small business entities because their annual gross receipts exceeded \$15.5 million. For six adoption service providers we have no gross receipts data (a small number of firms are not required to file form 990). Table 1 shows the distribution of gross receipts for the remaining 72 small firms.

TABLE 1—U.S. ACCREDITED AND APPROVED ADOPTION SERVICE PROVIDER FIRMS GROUPED BY ANNUAL GROSS RECEIPTS, NAICS INDUSTRY CODE 624110

Firms grouped by self-reported gross receipts	Number of adoption service providers	Percentage of small firms
Other Firms:		
Firms with Gross Receipts over \$15.5M	6	N/A
All Small Firms:		
Small Firms with Gross Receipts up to \$15.5M	72	100%
Firms with Gross Receipts over \$5M and up to \$15.5M	7	10%
Firms with Gross Receipts over \$2M and up to \$5M	12	17%
Firms with Gross Receipts over \$1M and up to \$2M	11	15%
Firms with Gross Receipts over \$500K and up to \$1M	14	19%
Firms with Gross Receipts over \$0 and up to \$500K	28	39%
Firms for Which We Have No Financial Data	6	N/A
Total Number of U.S. Accredited and Approved Adoption Service Providers	84	N/A

(5) A Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including Estimation of the Classes of Small Business Entities That Will Be Subject to the Requirements and the Types of Skills Necessary for Preparation of the Report or Record

Several of the new provisions in the final rule require additional record-keeping or reporting. The skills needed to perform the recordkeeping and reporting aspects of these changes to the regulation include planning for the form such recordkeeping will take, tracking of funds possibly provided using Excel or similar spreadsheet software, collecting information in a word processing document in some cases, and planning for receipt and review of reporting. Examples of increased recordkeeping and reporting:

- Proposed changes to section 96.32 include a new requirement for agencies and persons to disclose to the accrediting entities business relationships with organizations having interlocking leadership or whose leaders share family relationships. This requirement will apply to all agencies or persons, regardless of size. The standard will require ASPs to maintain lists and to report them to the accrediting entities. It will also require keeping the lists updated, which will result in some, though modest, ongoing implementation costs, after the first year.

- Section 96.36 concerns the prohibition on child buying and inducement. As discussed above, this final rule does not contain the prohibition on certain reasonable payments proposed in the NPRM. At the same time, we introduced greater accountability for all payments through record-keeping requirements for payments made or fees paid in connection with an intercountry adoption. Accounting for such payments will help decrease the risk of payments intended to benefit children being diverted to support illicit practices. The record-keeping requirements mentioned here apply to agency and person employees and

supervised providers who must retain a record of all payments provided in connection with an intercountry adoption and the purposes for which they were paid.

- Changes to section 96.46 provide that fees and expenses paid to foreign supervised providers for adoption services abroad will be billed to and paid by adoptive families through the primary provider. This new requirement will mean agencies and persons will transfer some funds to foreign supervised providers that families may have been providing themselves. Agencies and persons already have strong oversight responsibilities and supervision requirements with respect to foreign supervised providers, which are reinforced by these changes. The primary provider in the case is obliged under these changes to provide a written explanation of how and when such fees and expenses will be refunded if not used for the purpose intended. This process will require greater awareness and accountability on the part of the primary provider regarding how funds provided for use abroad are dispersed and accounted for.

- In some cases, an agency or person becomes aware of new information related to suitability and may withdraw its recommendation of the prospective adoptive parents in the home study or approval of a home study. When this occurs, the new provisions in section 96.47(e) require the agency or person to notify appropriate parties, including USCIS, the primary provider, and the prospective adoptive parents. These disclosure requirements must be accomplished in a timely fashion. All disclosures can be made electronically to facilitate the urgency of the decision-making in the case and to limit the cost of disclosures.

- Finally, in section 96.51, which addresses post-adoption services, including dissolution of an adoption, we included a new requirement that agencies and persons that do not provide post-adoption services provide clients information about potential sources of post-adoption support services where they live.

(6) Description of the Steps the Agency Took To Minimize the Significant Adverse Economic Impact on Small Entities, Organizations, or Small Government Jurisdictions

As noted, the Department diligently considered the concerns of agencies and persons about the cost of these changes to the regulations. The Department's primary concern was to meet the obligations of the statute on which the regulations are based and the treaty obligations under the Convention. We undertook to balance those interests with the practical realities of implementing changes to the regulations by the regulated entities. Part of this process was to try to determine what the cost of implementation would be. In our proposed rule, we provided the calculations we used to determine these costs, including the sources of information relating to national wage averages for the various categories of work with appropriate skill sets. The Department relied on the extensive public record of regional and national wage earner salaries found in Department of Labor publications. These data offered the most thoroughgoing estimates of what workers such as social workers, trainers, bookkeeping clerks, and auditors earn on average nationally, along with descriptions of what kinds of work they perform.

In Table 2, we summarize the implementation costs associated with significant changes found in the final rule. As noted before, we withdrew some proposed changes and accepted some recommendations from public commenters to alter other proposed changes, all of which had the result of significantly reducing projected implementation costs of this final rule. We estimated average cost of implementing the proposed changes in the *proposed rule* was over \$14,000 for each small firm in the first year. The current estimate for implementing the changes in the final rule is just over \$4,000 for a single firm in the first year.

TABLE 2—PROJECTED COSTS TO IMPLEMENT CHANGES IN THE FINAL RULE

Projected Implementation Costs for Small Firms	
A. Estimated Average First Year Costs for each Small Firm	\$4,164.50
* For subsequent year average costs, see the bottom of this table.	
Projected Implementation Costs for the Total Costs for all Small Firms and the Total of all Firms—all Sizes	
B. Total Estimated Average First Year Costs for all Small Firms	\$299,844
= A. × 72 small firms.	
C. Total Estimated Average First Year Costs for all Firms—all Sizes	\$349,818
= A. × 84 firms of all sizes.	

New regulatory elements and computation of estimated average first year costs	A. Estimated average 1st year \$ costs per small firm	B. Estimated average 1st year \$ costs—all small firms	C. Estimated average 1st year \$ costs—all firms
1. § 96.32(e)(4): ASP discloses to the AE any 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 <ul style="list-style-type: none"> • Creating and maintaining needed information: <ul style="list-style-type: none"> ○ 10 hours @\$31/hour. <i>Estimated annual first year cost: \$310.</i>	\$310	\$22,320	\$26,040
2. § 96.34: No incentive or contingent fees or plans to compensate formally or informally for locating or placing children <ul style="list-style-type: none"> • Updating Policies and Procedures: <ul style="list-style-type: none"> ○ 1–4 hours @\$31/hour. ○ Min./Max. cost: \$31/\$124. ○ Average estimated cost: \$77.50. • Training: <ul style="list-style-type: none"> ○ 1–5 hours @\$34/hour. ○ Min/Max cost: \$65/\$294. ○ Average estimated cost: \$102. <i>Estimated annual first year cost: \$179.50.</i>	180	12,924	15,078
3. § 96.36(b): Requires employees and supervised providers to record all payments or fees tendered and the purpose for which they were paid <ul style="list-style-type: none"> • Updating Policies and Procedures: <ul style="list-style-type: none"> ○ 1–6 hours @\$31/hour. ○ Min/Max Cost: \$31/\$186. ○ Average Estimated Cost: \$108.50. • Training: <ul style="list-style-type: none"> ○ 1–5 hours @\$34/hour. ○ Min/Max Cost: \$34/\$170. ○ Average Estimated Cost: \$102. • Financial Recordkeeping: <ul style="list-style-type: none"> ○ 2–4 hrs./month @\$23/hour (× 12). ○ Min/Max Cost: \$552/\$1104. ○ Average Estimated Cost: \$828. • Auditor/Defining Data Set: <ul style="list-style-type: none"> ○ 1–8 hours @\$42/hour. ○ Min/Max Cost: \$42/\$336. ○ Average Estimated Cost: \$189. <i>Estimated annual first year cost: \$1,227.50.</i>	1,228	88,380	103,110
4. § 96.37(c): Social service personnel/supervisors require experience or training in professional delivery of adoption services <ul style="list-style-type: none"> • Updating Policies and Procedures: <ul style="list-style-type: none"> ○ 2 hours @\$31/hour. ○ Estimated cost: \$62. • Training: <ul style="list-style-type: none"> ○ 2 hours @\$34/hour. ○ Estimated cost: \$68. <i>Estimated annual first year cost: \$130.</i>	130	9,360	10,920
5. § 96.38(b): Topics relating to intercountry adoption about which agency social service personnel require training <ul style="list-style-type: none"> • Training: <ul style="list-style-type: none"> ○ 1–15 hours @\$34/hour. ○ Min/Max Cost: \$34/\$510. <i>Estimated annual first year cost: \$272.</i>	272	19,584	22,848
6. § 96.38(d): Exemption from training for newly hired social service staff in certain circumstances <ul style="list-style-type: none"> • Updating Policies and Procedures: <ul style="list-style-type: none"> ○ 1–2 hours @\$31/hour. ○ Min/Max Cost: \$31/\$62. ○ Average Estimated Cost: \$46.50. • Training: <ul style="list-style-type: none"> ○ 1–2 hours @\$34/hour. ○ Min/Max Cost: \$34/\$68. ○ Average Estimated Cost: \$51. <i>Estimated annual first year cost: \$97.50.</i>	97.50	7,020	8,190
7. § 96.41(b): Permits any birth parent, PAP, adoptive parent, or adoptee to lodge electronic complaints and clarifies that all complaints must clearly identify the complainant and the date of the complaint <ul style="list-style-type: none"> • Updating Policies and Procedures: <ul style="list-style-type: none"> ○ 1 hour @\$31/hour. ○ Estimated cost: \$31. • Training: <ul style="list-style-type: none"> ○ 1–2 hours @\$34/hour. ○ Min/Max Cost: \$34/\$68. 	82	5,904	6,888

New regulatory elements and computation of estimated average first year costs	A. Estimated average 1st year \$ costs per small firm	B. Estimated average 1st year \$ costs —all small firms	C. Estimated average 1st year \$ costs —all firms
<ul style="list-style-type: none"> ○ Average Estimated Cost: \$51. <i>Estimated annual first year cost: \$82.</i>			
<p>8. § 96.46(b)(7): Prohibits PAP direct payments to foreign supervised providers for adoption services. Primary providers bill clients and pay fees and expenses due to the foreign supervised providers</p> <ul style="list-style-type: none"> • Updating Policies and Procedures: <ul style="list-style-type: none"> ○ 1–6 hours @\$31/hour. ○ Min/Max Cost: \$31/\$186. ○ Average Estimated Cost: \$109. • Training: <ul style="list-style-type: none"> ○ 1–5 hours @\$34/hour. ○ Min/Max Cost: \$34/\$170. ○ Average Estimated Cost: \$102. • Financial Recordkeeping: <ul style="list-style-type: none"> ○ 1–2 hrs./month @\$23/hour (× 12). ○ Min/Max Cost: \$276/\$552. ○ Average Estimated Cost: \$414. • Auditor/Defining Data Set: <ul style="list-style-type: none"> ○ 1–4 hours @\$42/hour. ○ Min/Max Cost: \$42/\$168. ○ Average Estimated Cost: \$189. <i>Estimated annual first year cost: \$729.50.</i>	729.50	52,524	61,278
<p>9. § 96.47(e): Procedures for withdrawal of home study approval including notification to USCIS, the primary provider, and others as appropriate</p> <ul style="list-style-type: none"> • Updating Policies and Procedures; Notifying Prospective Adoptive Parents, USCIS, and the Department as Needed: <ul style="list-style-type: none"> ○ 1–8 hours @\$31/hour. ○ Min/Max Cost: \$31/\$248. ○ Average Estimated Cost: \$139.50. • Training: <ul style="list-style-type: none"> ○ 1–10 hours @\$34/hour. ○ Min/Max Cost: \$34/\$340. ○ Average Estimated Cost: \$189. <i>Estimated annual first year cost: \$326.50.</i>	326.50	23,508	27,426
<p>10. § 96.51: Clarifies ASP role in post-adoption services in incoming cases and requires providing sources of support in the event of dissolution if the ASP does not provide post adoption services</p> <ul style="list-style-type: none"> • Updating Policies and Procedures: <ul style="list-style-type: none"> ○ 1–5 hours @\$31/hour. ○ Min/Max Cost: \$31/\$155. ○ Average Estimated Cost: \$93. • Training: <ul style="list-style-type: none"> ○ 1–15 hours @\$34/hour. ○ Min/Max Cost: \$34/\$510. ○ Average Estimated Cost: \$272. <i>Estimated annual first year cost: \$365.</i>	365	26,280	30,660
<p>11. <i>Additional Costs</i></p> <ul style="list-style-type: none"> • Executive Director’s time: <ul style="list-style-type: none"> ○ 5 hours/year @\$89/hour: \$445. • Cost of Archiving Electronic Information: <ul style="list-style-type: none"> ○ There may be some archiving costs to store the new information to be collected in the final rule. Costs will vary according to the ASP’s electronic processing needs, how it organizes its electronic records, and any excess capacity on hand to absorb the additional information. Given these factors, we are unable to estimate this additional cost. <i>Estimated annual first year cost: \$445.</i>	445	32,040	37,380
<p>Total Estimated Average Costs for the First Year</p>	4,164.50	299,844	349,818
New regulatory elements and computation of estimated average subsequent year costs	A. Average subsequent year \$ costs per small firm	B. Average subsequent year \$ costs —all small firms	C. Average subsequent year \$ costs —all firms
<p>1. § 96.32(e)(4): Subsequent years average costs for maintaining lists and disclosure to the accrediting entities of any 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</p> <ul style="list-style-type: none"> • Maintaining the information: <ul style="list-style-type: none"> ○ 2 hours @\$31/hour. <i>Estimated annual subsequent year cost for small firms: \$62.</i>	62	4,464	5,208

New regulatory elements and computation of estimated average subsequent year costs	A. Average subsequent year \$ costs per small firm	B. Average subsequent year \$ costs—all small firms	C. Average subsequent year \$ costs—all firms
2. § 96.36(b): (Subsequent year average costs for the enhanced recordkeeping of fees and payments made in connection with intercountry adoption.)	828	59,616	69,552
<ul style="list-style-type: none"> Financial Recordkeeping: <ul style="list-style-type: none"> 2–4 hrs./month @23/hour. Min/Max cost: \$552/\$1,104. Estimated average annual subsequent year cost for small firms: \$828.			
Total Average Costs for Subsequent Years	890	64,080	74,760

Wage categories with national average wage rates from the may 2022 bureau of labor statistics occupational employment and wage statistics data tables		
ASP staff roles	Performed by	National average hourly rate
Financial Recordkeeping	Bookkeeping Clerk (Occupation category 43–3031)	@ \$23
Updating Policies and Procedures; Notifying Prospective Adoptive Parents, USCIS, and the Department as Needed.	Social Worker (Occupation category 21–1029)	@ 31
Training	Training Officer (Occupation category 13–1151)	@ 34
Auditor/Data Set Defining	Auditor (Occupation category 13–2011)	@ 42
Chief Executives	Executive Director/CEO (Occupation category 11–1011)	@ 89

Table 3 illustrates the estimated annual cost of implementation expressed as a percentage of gross receipts of agencies and persons. For nearly all accredited agencies and approved persons, the cost of

implementation represents less than one percent, and in no case more than 1.6% of gross receipts, as reported in IRS Form 990. We also expect that agencies and persons will benefit from economies generated by sharing

information related to implementation, which may result in cost savings, particularly relating to tasks such as updating policies and procedures and preparing internal and external training related to new or revised standards.

TABLE 3—REVENUE TEST FOR ACCREDITED OR APPROVED ADOPTION SERVICE PROVIDERS’ COST OF IMPLEMENTATION AS A PERCENTAGE OF ANNUAL GROSS RECEIPTS [NAICS Industry Code 624110—Up to \$15.5 Million = Small Firm]

Firm size (by gross receipts)	Average annual gross \$ receipts	Number of adoption service provider firms	Percentage of small firms	Average \$ cost per firm in first year	Revenue test %	Average \$ cost per firm in sub-sequent years	Revenue test %
Firms with Gross Receipts over \$15.5M	26,375,544	6	N/A	4,165	<1	890	<1
Small Firms:							
Gross Receipts—All Small Firms \$0 up to \$15.5M	2,883,831	72	100	4,165	<1	890	<1
Firms with Gross Receipts over \$5M and up to \$15.5M	8,550,186	7	10	4,165	<1	890	<1
Firms with Gross Receipts over \$2M and up to \$5M	3,577,609	12	17	4,165	<1	890	<1
Firms with Gross Receipts over \$1M and up to \$2M	1,351,564	11	15	4,165	<1	890	<1
Firms with Gross Receipts over \$500K and up to \$1M	677,821	14	19	4,165	<1	890	<1
Firms with Gross Receipts over \$0K and up to \$500K	261,977	28	39	4,165	1.6	890	<1

Number of Adoption Service Provider Firms about which We Have No Financial Data: 6.

Congressional Review Act

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) 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 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 does not impose any obligations on State governments or have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Orders 12866, 14094, and 13563

The Department has reviewed this final rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866, as amended by Executive Order 14094. The cost to accredited agencies and approved persons for implementing the changes in the final rule are modest and reflect an effort to maximize desired outcomes at minimized cost. 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 prospective adoptive parents, are

difficult to quantify economically. That makes a strict cost-benefit analysis difficult to accomplish. Nonetheless, we believe the benefits apparent from this *qualitative* discussion of costs and benefits support our conclusion that the costs associated with the proposed changes are justified and conclude 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.

We discussed earlier in this preamble why we pursued revisions to the accreditation rule and why we introduced new elements. We noted qualitative factors informing the process and our estimates of average dollar costs to implement them. In parts II and III of this preamble, we highlighted changes included in this final rule responsive to adoption service provider comments addressing both the cost and the effectiveness of our proposed revisions

to the rule. The following discussion summarizes the categories of benefits driving changes incorporated in the final rule.

Because this final rule concerns standards for agencies and persons providing adoption services in intercountry adoption and the accreditation and oversight process authorizing them to do so, our cost-benefit analysis relies on categories of benefits that are both nonmonetizable and nonquantifiable. The qualitative character of the resulting cost-benefit analysis closely reflects the qualitative outcomes essential to carrying out our statutory accreditation scheme in service of each side of the adoption triad: children, birth families, and adoptive families.

As part of the cost-benefit analysis responsive to Executive Orders 12866, as amended, and E.O. 13563 we weighed possible changes to the final rule against several categories of qualitative benefits summarized in Table 4.

TABLE 4—BENEFIT CATEGORIES

Benefit Category 1—*Efficiency*.

Benefit Category 2—*Clarity and Transparency*.

Benefit Category 3—*Payment Accountability*.

Benefit Category 4—*Enhanced Expertise of Social Service Personnel*.

Benefit Category 5—*Preserving Due Process Protections*.

Benefit category 1—*Efficiency*. This category represents maximizing the effective use of resources in a standard or process. The new provisions relating to adoption by relatives are illustrative as they provide a streamlined process limiting primary provider services while leveraging the experience of in-country relatives. The resulting savings in time and expense promises to make adoption by relatives a more accessible option for adoptive families.

Benefit Category 2—*Clarity and Transparency*. The revised regulations provide processes that address persistent questions raised by adoption service providers and accrediting entities, such as requirements for notification regarding changes in prospective adoptive parent suitability. This benefit category is also embodied in the revision to best interests of the child and in clarifying the requirements of the submission of complaints to adoption service providers.

Benefit Category 3—*Payment Accountability*. In the final rule we introduce enhanced recordkeeping practices for payments and fees made in connection with an intercountry adoption. In addition, we added a

standard that prohibits foreign supervised providers from directly billing prospective adoptive parents for the provision of adoption services abroad. These changes will increase transparency between primary providers and foreign supervised providers in a child's country of origin and better protect prospective adoptive parents from price gouging and from imposition of unexpected additional fees in the adoption process abroad.

Benefit Category 4—*Enhanced Expertise of Social Service Personnel*. We enhanced social worker training standards to incorporate new elements relating to trauma-informed parenting and assisting children with special needs. Agencies and persons utilize initial and ongoing training to keep newly hired and current employees well prepared and highly knowledgeable. Duties assigned to social service personnel include providing adoptive families adoption-related social services that involve the application of clinical skills and judgment.

Benefit Category 5—*Preserving Due Process Protections*. The accreditation regulations include procedures for holding agencies and persons

accountable for misconduct through adverse action proceedings. In the final rule we introduce new procedural safeguards applicable when the Secretary suspends or cancels accreditation or approval, including how to overcome the suspension or cancellation either because the adverse action was unwarranted or because the deficiencies leading to suspension or cancellation have been corrected. These changes also enhance clarity and transparency for adoption service providers faced with a loss of accreditation or approval. The new procedures for use in debarment proceedings, likewise, provide clarity and transparency while also effectively protecting the due process rights of agencies and persons accused of the most egregious abuses and facing the most severe penalties.

Taken as a whole, the changes in this final rule 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 worldwide.

Total Cost Estimates

Table 5 summarizes the financial 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 summarized in Table 2. The 10-year discounted cost of the proposed rule in 2023 dollars would range from \$953,000 to \$994,000 (with three and seven percent discount rates,

respectively). The annualized costs of the proposed rule would range from \$95,000 to \$99,000 (with three and seven percent discount rates, respectively).

TABLE 5—COSTS OF THE PROPOSED RULE IN 2023 \$ (THOUSANDS) WITH THREE AND SEVEN PERCENT DISCOUNT RATES

Fiscal year	All adoption service provider firms regardless of size
2024	350
2025	75
2026	75
2027	75
2028	75
2029	75
2030	75
2031	75
2032	75
2033	75
Undiscounted Total	\$1,025
Total with 3% discounting	\$994
Total with 7% discounting	\$953
Annualized, 3% discount rate, 10 years	\$99
Annualized, 7% discount rate, 10 years	\$95

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 Department of State amends 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.

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 the State. In all other cases, including any case in which a child is outside the United States at the time the ASP considers 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, the IAA, the UAA, and their implementing regulations.

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.

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.

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 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 of a child 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.

Public foreign authority means an authority operated by a national or subnational government of a foreign country.

Relative, for the purposes of the alternative procedures for primary providers in intercountry adoption by relatives found in subpart R of this part, means a prospective adoptive parent was already, before the adoption, 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 domestic or foreign 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)).

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 agency or person that provides adoption services, and of any membership organization that includes agencies or 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 agencies or persons or with any membership organization that includes 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 longer if 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 accrediting entity 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. Revise § 96.12 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 requested documentation or information, 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 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 longer if 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. Except as provided in § 96.25 and paragraphs (e) and (f) of this section, the accrediting entity may only 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 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 this subpart E and subpart 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.

§ 96.28 [Reserved]

■ 6. Revise subpart F to read as follows:

Subpart F—Standards for Intercountry Adoption Accreditation and Approval

Sec.

96.29 Scope.

Licensing, Compliance With Applicable Laws, and Corporate Governance

96.30 State licensing and compliance with all applicable laws.

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

§ 96.29 Scope.

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

Licensing, Compliance with Applicable Laws, and Corporate Governance

§ 96.30 State licensing and compliance with all applicable laws.

(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.

(e) The agency or person complies with applicable laws in all foreign countries in which it provides 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 permanent records of the meetings and deliberations of its governing body and of its major decisions affecting the delivery of adoption services.

(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 financial resources 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 offer to compensate 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, supervised providers, individuals, and entities 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, supervised providers, individuals, or entities involved in an intercountry adoption on behalf of the agency or person, are not unreasonably high in relation to the services actually rendered, taking into account the country in which the services are

provided and norms for compensation within the intercountry adoption community in that country, to the extent that such norms are known to the accrediting entity; the location, number, and qualifications of staff; workload requirements; budget; and size of the agency or person.

(e) Any other compensation paid or offered 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; and

(9) Descriptions of any businesses or activities that are 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 who is in a senior management position 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 are 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. If permitted or required by the child's country of origin, an agency or person may remit reasonable payments for activities related to the adoption proceedings, pre-birth and birth medical costs, the care of the child, the care of the birth mother while pregnant and immediately following birth of the child, or the provision of child welfare and child protection services generally. Permitted or required contributions shall not be remitted 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 and supervised providers 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 the countries of origin 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, and attachment and post-traumatic stress disorders;

(4) Trauma-informed parenting;

(5) 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;

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

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

(8) The impact of adoption on other children already in the home;

(9) How adoptive parents can support children who experience racism and discrimination;

(10) How adoptive parents can support and advocate for children discriminated against due to physical, cognitive, and other disabilities;

(11) The most frequent medical, and psychological problems experienced by children from the countries of origin 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;

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

(13) 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

(14) 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 may exempt 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;

(2) The supervised providers with whom the prospective client(s) can expect to work in the United States and in the child's country of origin and the usual costs associated with their services; and

(3) 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) The agency or person provides to all applicants, prior to application, a written schedule of expected total fees and estimated expenses and an explanation of the conditions under which fees or expenses may be charged, waived, reduced, or refunded and when and how the fees and expenses must be paid.

(b) Before providing any adoption service to prospective adoptive parent(s), the agency or person itemizes and discloses in writing the following information for each separate category of fees and estimated expenses that the prospective adoptive parent(s) will be

charged in connection with an intercountry adoption:

(1) *Home Study*. The expected total 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;

(2) *Adoption expenses in the United States*. The expected total fees and estimated expenses for all adoption services other than the home study that will be provided in the United States. This category includes, but is not limited to, personnel costs, administrative overhead, operational costs, training and education, communications and publications costs, and any other costs related to providing adoption services in the United States;

(3) *Foreign Country Program Expenses*. The expected total fees and estimated expenses for all adoption services that will be provided in the child's country of origin. This category includes, but is not limited to, costs for personnel, administrative overhead, training, education, legal services, and communications, and any other costs related to providing adoption services, in the child's Convention country;

(4) *Care of the Child*. The expected total fees and estimated expenses charged to prospective adoptive parent(s) for the care of the child in the country of origin prior to adoption, including, but not limited to, costs for food, clothing, shelter and medical care; foster care services; orphanage care; and any other services provided directly to the child;

(5) *Translation and document expenses*. The expected total 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, either in the United States or in the child's country of origin, 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 notarizations and certifications;

(6) *Contributions*. Any fixed contribution amount, or percentage that the prospective adoptive parent(s) will be expected or required to make to child protection or child welfare service

programs in the child's country of origin country or in the United States, along with an explanation of the intended use of the transaction and the manner in which the contribution will be recorded and accounted for; and

(7) Post-placement and post-adoption reports. The expected total fees and estimated expenses for any post-placement or post-adoption reports that the agency or person or parent(s) must prepare in light of any requirements of the expected country of origin.

(c) If the following fees and estimated expenses were not disclosed as part of the categories identified in paragraph (b) of this section, the agency or person itemizes and discloses in writing any:

(1) Third party fees. The expected total fees and estimated expenses for services that the prospective adoptive parent(s) will be responsible to pay directly to a third party. Such third party fees include, but are not limited to, fees to competent authorities for services rendered or Central Authority processing fees; and

(2) Travel and accommodation expenses. The expected total fees and estimated expenses for any travel, transportation, and accommodation services arranged by the agency or person for the prospective adoptive parent(s).

(d) The agency or person also specifies in its adoption services contract when and how funds advanced to cover fees or expenses will be refunded if adoption services are not provided.

(e) 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 policy to the prospective adoptive parent(s) in advance of providing any adoption services and gives the prospective adoptive parent(s) a general description of the programs supported by such funds.

(f) 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 the prospective adoptive parent(s) to pay for adoption services provided in the Convention country are minimized or unnecessary.

(g) 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 in the foreign

country, 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 parent(s);

(2) It obtains the specific consent of the prospective adoptive parent(s) prior to expending any funds in excess of \$1,000 for which the agency or person will hold the prospective adoptive parent(s) responsible or gives the prospective adoptive parent(s) the opportunity to waive the notice consent requirement in advance. If the prospective adoptive parent(s) has the opportunity to waive the notice and consent requirement in advance, this policy is reflected in the written policies and procedures of the agency or person; and

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

(h) The agency or person returns any funds to which the prospective adoptive parent(s) 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 client(s) at the time the adoption services contract is signed.

(b) The agency or person permits any birth parent, prospective adoptive parent or adoptive parent, or adoptee to lodge directly with the agency or person dated written or electronic (including by email or facsimile) complaints about any of the services or activities of the agency or person (including its use of supervised providers) that he or she believes raise an issue of compliance with the Convention, the IAA, the UAA, or the regulations implementing the IAA or UAA, and advises such individuals 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. All complaints must include the name of the complainant.

(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 a client or prospective client from, or retaliate against a client or prospective client 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 foreign country from which the child emigrated;
 (ii) The State to which the child immigrated;
 (iii) The age of the child;
 (iv) The date of the child's placement for adoption;
 (v) The reason(s) for and resolution(s) of the disruption of the placement for adoption, including information on the child's re-placement for adoption and final legal adoption;

(vi) The names of the agencies or persons that handled the placement for adoption; and

(vii) The plans for the child;

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

(i) The foreign country from which the child emigrated;
 (ii) The State to which the child immigrated;
 (iii) The age of the child;
 (iv) The date of the child's placement for adoption;
 (v) The reason(s) for and resolution(s) of the dissolution of the adoption, to the extent known by the agency or person;
 (vi) The names of the agencies or persons that handled the placement for adoption; and
 (vii) The plans for the child.

(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 court, excluding any period for appeal.

(6) Information on the range of adoption fees, including the lowest, highest, average, and the median of such fees, set forth by the child's country of origin, charged by the agency or person for intercountry adoptions involving children immigrating to the United States in connection with their adoption.

(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 within thirty days of 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 relevant section of the Convention, the IAA, the UAA, and regulations implementing the IAA and the UAA for the particular adoption service being provided;

(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 with jurisdiction over the primary provider;

(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. The primary provider provides a written explanation of how and when such fees and expenses will be refunded if the service is not provided or 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;

(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 parent(s) 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 update(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, preparation, 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 and primary provider, of its withdrawal of its recommendation and/or approval 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); and

(3) Maintain written records of the withdrawal of its recommendation and/or approval, the step(s) taken to reach such decision, and the reasons for the withdrawal.

§ 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 video 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 video and photographs of the child taken by the agency or person (including by their supervised providers) are identified by the date on which the video 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 video 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, the agency or person makes an effort to provide or arrange for counseling by an individual with appropriate skills to

assist the family in dealing with the problems that have arisen.

(d) If counseling does not succeed in resolving the crisis and the placement is disrupted, the agency or person assuming custody of the child assumes responsibility for making another placement of the child.

(e) The agency or person acts promptly and in accord 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 State law, obtains the consent of the child prior to removal.

(2) The agency or person does not return from the United States a child placed for adoption in the United States unless the Central Authority of the country of origin and the Secretary have approved the return in writing.

(f) 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.

(g) 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.

(h) 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 thirty 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) in the adoption services contract whether the agency or person will or will not provide any post-adoption 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 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 parent(s) 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) The agency or person keeps the Central Authority of the foreign 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 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 to the Central Authority or other competent authority in the child's country of origin the home study, including any updates required by such competent authority in 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 the transfer of the child does not take place, the agency or person must consider the specific requirements, if any, of competent authorities in the State and/or in the child's country of origin and the preference of prospective adoptive parents in its determination of the disposition of the home study on the prospective adoptive parent(s) and/or the child background study.

(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) Except in the case of adoption by relatives or in the case in which the birth parent(s) have identified specific prospective adoptive parent(s) or in other special circumstances accepted by the State court with jurisdiction over the case, 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 his or her availability for adoption through print, media, and internet resources designed to communicate with potential prospective adoptive parent(s) in 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 inquiries about adoption of the child; and

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

(b) The agency or person demonstrates to the satisfaction of the State court with jurisdiction over the adoption that sufficient reasonable efforts (including no efforts, when in the best interests of the child) to find a timely and qualified adoptive placement for the child in the United States were made.

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

(1) To the extent consistent with State law, gives significant weight to the placement preferences expressed by the birth parent(s) in all voluntary placements;

(2) To the extent consistent with State law, 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

(3) Complies with all applicable requirements of the Indian Child Welfare Act.

(d) 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 parent(s) who reside outside the United States, the agency or person provides such disclosure.

(e) 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.

(f) 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).

(g) 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.

(h) 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).

(i) 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.

(j) 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.

(k) 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, the agency or person must consider the specific requirements, if any, of competent authorities in either the State or in the receiving country and the preference of the prospective adoptive parents in its determination of the disposition of the home study on the prospective adoptive parent(s) and/or the child background study.

(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(b) 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; and

(4) 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 30 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 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 debars 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 debars 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. 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 or approval 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 or approval 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 confirm the 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(c) 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; and
- (4) Other information specifically authorized in writing by the accredited agency or approved person to be disclosed to the public.

(b) Each accrediting entity must make the following information available to individual members of the public upon specific request:

(1) 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

(2) 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.

§ 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.

Subparts N, O, P, and Q [Reserved]

■ 10. Add subpart R to read as follows:

Subpart R—Alternative Procedures for Primary Providers in Intercountry Adoption by Relatives

Sec.

96.100 Alternative procedures for primary providers in intercountry adoption by relatives.

96.101 Effective date for alternative procedures for primary providers in intercountry adoption by relatives.

Subpart R—Alternative Procedures for Primary Providers in Intercountry Adoption by Relatives

§ 96.100 Alternative procedures for primary providers in intercountry adoption by 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) 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 Effective date for alternative procedures for primary providers in intercountry adoption by relatives.

The provisions of this subpart become effective January 8, 2025.

NOTE: The following appendix will not appear in the Code of Federal Regulations:

APPENDIX A—RELATIVE RELATIONSHIPS AS DEFINED IN 8 CFR AND 22 CFR—OVERLAPPING FAMILIAL RELATIONSHIPS IN TWO DEFINITIONS OF RELATIVE

Column A	Column B	Column C
Prospective adoptive parent familial relationships with the <i>parent</i> of the child to be adopted as defined in 8 CFR 204.309(b)(2)(iii)	Converted familial relationships in Column A for comparison with relationships in Column C	Prospective adoptive parent familial relationships with the <i>child</i> to be adopted as defined in 22 CFR 96.2
former parent/mother or father-in-law/step-parent/parent. former wife or husband/husband or wife daughter-in-law/stepdaughter/daughter son-in-law/stepson/son half-sister/sister-in-law/stepmother/sister half-brother/brother-in-law/stepbrother/brother ... aunt uncle niece nephew 1st cousin 2nd cousin	To compare the relationships in column A with those in column C, the terms need to be equivalent. This column shows the conversion of prospective adoptive parent relationships to the PARENT of the child in column A to prospective adoptive parent relationships to the CHILD her/himself as in column C grandparent parent/stepparent sister/stepmother/half-sister brother/stepbrother/half-brother aunt uncle great aunt great uncle 1st cousin 1st cousin 1st cousin once removed 2nd cousin once removed	(Overlapping equivalent familial relationships are in bold .) grandparent . parent/stepparent . sister/stepmother/half-sister . brother/stepbrother/half-brother . aunt . uncle . not included.* not included.* not included.* not included.* not included.*

* The definition of relative in 22 CFR includes first- and second-degree family relationships. The definition in 8 CFR includes third and some fourth-degree relationships such as great aunts and uncles and first and second cousins. Prospective adoptive parents with relationships beyond the second-degree may adopt relatives but not under the alternative procedures for primary providers found in 22 CFR 96.100.

Rena Bitter,

*Assistant Secretary, Bureau of Consular
Affairs, Department of State.*

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