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**Hague Convention on Intercountry
Adoption; Intercountry Adoption Act of
2000; Accreditation of Agencies; Approval
of Persons; Preservation of Convention
Records; Proposed Rules**

DEPARTMENT OF STATE

22 CFR Part 96

[Public Notice 4466]

RIN 1400-AA-88

Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons; Preservation of Convention Records

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State (the Department) is proposing regulations to implement the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA). The Convention and the IAA require that adoption service providers be accredited or approved to provide adoption services for intercountry adoptions involving two countries party to the Convention. These proposed rules establish procedures that the Department will use to designate accrediting entities for the purpose of evaluating agencies and persons and determining if they may be granted accreditation or approval. These proposed rules also contain procedures and standards to accredit agencies and approve persons to provide adoption services in Convention cases. These rules will ensure that, when the Convention enters into force for the United States, there will be accredited agencies and approved persons to provide adoption services for Convention adoptions.

DATES: Comments must reach the Department on or before November 14, 2003.

ADDRESSES: Commenters may send hard copy submissions or comments in electronic format. Commenters sending only hard copies must send an original and two copies referencing docket number State/AR-01/96 to: U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, SA-29, 2201 C Street, NW., Washington, DC 20520. Hard copy comments may also be sent by overnight courier services to: U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, 2201 C Street, NW., Washington, DC 20520. Do not personally hand deliver comments to the Department of State.

Comments referencing the docket number State/AR-01/96 may be submitted electronically to adoptionregs@state.gov. Two hard

copies of the comments submitted electronically must be mailed under separate cover as well. The electronic comments or the hard copy comments must be received by the date noted above in the date section of this proposed rule. Comments must be made in the text of the message or submitted as a Word file avoiding the use of any form of encryption or use of special characters. If you submit comments by hard copy rather than electronically, include a disk with the submission if possible. Hard copy submissions without an accompanying disk file, however, will be accepted.

FOR FURTHER INFORMATION CONTACT:

Edward Betancourt or Anna Mary Coburn at 202-647-2826 or Jessica Rosenbaum at 202-312-9717. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: As noted, comments may be submitted electronically to:

adoptionregs@state.gov. Public comments and supporting materials are available for viewing at the Adoption Regulations Docket Room. To review docket materials, members of the public must make an appointment by calling Delilia Gibson-Martin at 202-647-2826. The public may copy a maximum of 100 pages at no charge. Additional copies cost \$0.25 a page.

The Department of State will keep the official record for this action in paper form. Accordingly, the official administrative file is the paper file maintained at the Adoption Regulations Docket Room, United States Department of State. The Department of State's responses to public comments, whether the comments are received in written or electronic format, will be published in the **Federal Register**, and no immediate responses will be provided. General information about intercountry adoptions is available on the Department of State's Web site at <http://travel.state.gov/adopt.html> and the Department of Homeland Security Web site at <http://www.immigration.gov>. Background information about the development of these regulations is provided at <http://www.hagueregs.org>.

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I. Legal Authority

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993,

S. Treaty Doc. 105–51 (1998); 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)), 32 I.L.M. 1134 (1993); Intercountry Adoption Act of 2000, 42 U.S.C. 14901–14954.

II. Introduction

Regulations to implement the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the recently enacted Intercountry Adoption Act of 2000 (the IAA), Public Law 106–279, 42 U.S.C. 14901–14954 (herein referred to as the IAA or Public Law 106–279), are being proposed for the first time. These regulations will be added as part 96 of title 22 of the Code of Federal Regulations (CFR). The purpose of these regulations is to enable the United States to become a party to the Convention. The Convention governs intercountry adoptions between countries that are parties to the Convention (“Convention adoptions”). The IAA is the U.S. implementing legislation for the Convention. Once the Convention enters into force for the United States, all Convention adoptions must comply with the Convention, the IAA, and these regulations.

These regulations address the accreditation of agencies (non-profit adoption service providers) and the approval of persons (for-profit and individual adoption service providers) to provide adoption services in Convention cases. The regulations also set forth the process for designating one or more accrediting entities to perform the accreditation and approval functions, the procedures for conferring and renewing accreditation and approval, the procedures for monitoring compliance with accreditation or approval standards, the rules for taking adverse action against accredited agencies and approved persons, and the standards for accreditation and approval. The regulations also address which agencies and persons are required to adhere to these standards, and what adoption-related activities are exempted from the accreditation and approval requirements. Finally, the regulations set forth the procedures and requirements for temporary accreditation under section 203(c) of the IAA. (Pub. L. 106–279, section 203(c)).

These regulations do not address how the Department and the Department of Homeland Security (herein referred to as DHS until the Department of Homeland Security identifies which DHS bureau will assume the functions delegated to the Immigration and Naturalization Service (INS) under the IAA will implement the provisions of the Convention and the IAA that govern

procedures for completing and recognizing Convention adoptions. The regulations on intercountry adoption procedures for Convention adoptions will become part 97 of title 22 of the CFR and will be published at a later date. Also published in today’s **Federal Register** is the proposed rule for part 98 of title 22 of the CFR. Part 97 is reserved, and part 98 provides the proposed rule on the Department and DHS’s retention of Convention records.

The IAA designates the U.S. Department of State as the Central Authority for the United States. The Secretary of State is designated as the head of the Central Authority. For purposes of this Preamble, the shorthand term “the Department” is generally used rather than the Secretary of State or the Department of State. Certain Central Authority functions are delegable outside of the Department and the Federal government and will effectively be delegated either to the accrediting entities or to the accredited agencies, temporarily accredited agencies, or approved persons, as appropriate, pursuant to these regulations. The IAA specifically provides that the Department may “authorize public or private entities to perform appropriate central authority functions for which the [Department] is responsible, pursuant to regulations or under agreements published in the **Federal Register**.” (Pub. L. 106–279, section 102(f)(1)).

As Central Authority, the Department will be responsible for: Acting as liaison with other Central Authorities; assisting U.S. citizens seeking to adopt children from abroad and to residents of other Convention countries seeking to adopt children from the United States; exchanging information; overseeing the accreditation and approval of adoption service providers; monitoring and facilitating individual cases involving U.S. citizens; and, jointly with the Attorney General (presumably now the Secretary of Homeland Security), establishing a Case Registry with information on intercountry adoptions with Convention and non-Convention countries.

This Preamble is intended to facilitate understanding of the background and purpose underlying the regulations. The Preamble should not be considered a substitute for the text of the regulations themselves. The Preamble is designed to provide an overview of the proposed regulations; however, it will not become part of the final regulations when they are published in the CFR. Accrediting entities, as well as accredited agencies and approved persons, and those working under the supervision and

responsibility of accredited agencies and approved persons, will be held responsible for compliance with the regulations that apply to them.

III. The 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption

A. Development of the Hague Convention on Intercountry Adoption

A copy of the Convention is available on the Hague Conference Web site at <http://www.hcch.net>. The Convention is a multilateral treaty developed under the auspices of the intergovernmental organization known as the Hague Conference on Private International Law (Hague Conference). The Convention provides a framework of safeguards for protecting children and families involved in intercountry adoption, while still being acceptable to, and capable of being implemented by, diverse sending and receiving countries. This Convention is one of the most widely embraced and broadly accepted conventions developed by the Hague Conference.

The Convention is the first international instrument to recognize that intercountry adoption could “offer the advantage of a permanent home to a child for whom a suitable family cannot be found in his or her state of origin.” (S. Treaty Doc. 105–51, at 1). Some countries involved in the multilateral negotiations on the Convention sought to prohibit intercountry adoptions even for those children eligible for adoption for whom a permanent family placement in the child’s country of origin could not be arranged. On the other hand, proponents of intercountry adoption at the Hague Conference believed that the best interests of a child would not be served by arbitrarily prohibiting a child in need of a permanent family placement from being matched with an adoptive family simply because the family resided in another country. The Convention reflects a consensus that an intercountry adoption may well be in an individual child’s best interests.

If a country becomes a party to the Convention, intercountry adoptions—incoming and outgoing—with other party countries must comply with the requirements of the Convention. The objectives of the Convention are: First, to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for the child’s fundamental rights as recognized in international law; second, to establish a system of cooperation among contracting states to ensure that those safeguards are

respected and thereby prevent the abduction, sale of, or traffic in children; and third, to secure the recognition in contracting states of adoptions made in accordance with the Convention. The Convention also requires all parties to act expeditiously in the process of adoption. The Convention's norms and principles apply whether the party country is acting as a sending country or as a receiving country.

To accomplish its goals, the Convention makes a number of significant modifications to current intercountry adoption practice, including three particularly important changes. First, the Convention mandates close coordination between the governments of contracting countries through a Central Authority in each Convention country. In its role as a coordinating body, the Central Authority is responsible for sharing information about the laws of its own and other Convention countries and monitoring individual cases. Second, the Convention requires that each country involved make certain determinations before an adoption may proceed. The sending country must determine in advance that the child is eligible to be adopted, that it is in the child's best interests to be adopted internationally, that the consent of birth parents, institutions, or authorities that are necessary under the law of the country of origin have been obtained freely and in writing, and that the consent of the child, if required, has been obtained. The sending country must also prepare a child background study that includes the medical history of the child as well as other background information.

Concurrently, the receiving country must determine in advance that the prospective adoptive parent(s) are eligible and suited to adopt, that they have received counseling, and that the child will be eligible to enter and reside permanently in the receiving country. The receiving country must also prepare a home study on the prospective adoptive parent(s). These advance determinations and studies are designed to ensure that the child is protected and that there are no obstacles to completing the adoption.

B. U.S. Ratification of the Convention

The United States signed the Convention on March 31, 1994, with the intent to ratify it in due course. On September 20, 2000, the Senate gave its advice and consent to ratification. The Senate's advice and consent to the Convention were subject to the following declaration: "The President shall not deposit the instrument of

ratification for the Convention until such time as the Federal law implementing the Convention is enacted and the United States is able to carry out all the obligations of the Convention, as required by its implementing legislation." (146 Cong. Rec. S8866 (daily ed. Sept. 20, 2000)). Thus, the Convention will not actually come into force and govern intercountry adoptions between the United States and other party countries until the United States is able to carry out its obligations. These regulations are essential in enabling the United States to meet its Convention obligations.

The United States strongly supports the Convention's purposes and principles and believes that U.S. ratification will further the critical goal of protecting children and families involved in intercountry adoptions. The United States is a major participant in intercountry adoption, primarily as a receiving country but also as a sending country. Many U.S. citizens adopt children eligible for adoption from another country, and in those cases the United States is acting as a receiving country. From October 1999 to September 2002, a total of 59,079 children were issued orphan visas to immigrate to the United States in connection with their adoption. As a sending country, the United States also places children abroad for adoption. There are no reliable statistics at the Federal level on the number of U.S. children adopted annually by persons resident in a foreign country.

Advocates for ratification of the Convention argued that many Convention countries would eventually refuse to permit intercountry adoptions by U.S. citizens unless the United States ratified the Convention (Hearing on the Convention and IAA Before the Senate Comm. on Foreign Relations, 106th Cong. (October 5, 1999)). The Department in fact has seen such developments. The Department wishes to complete preparations for implementation as rapidly as possible to ensure that U.S. families and the children they adopt have the advantage of the Convention's protections and that U.S. prospective adoptive parent(s) will be able to adopt children from Convention countries, particularly if those countries prohibit adoptions vis-à-vis countries that are not party to the Convention. The Department also wants to ensure that U.S. children who are adopted by parents from other countries are protected under the Convention and the IAA as well.

C. Use of Private, Accredited Adoption Service Providers

One particularly controversial issue that arose during Convention negotiations was whether private adoption service providers would be permitted to perform Central Authority functions. Some countries wanted all parties to rely exclusively on public or governmental authorities to perform Central Authority functions. Other countries, including the United States, advocated for parties to have the option of using private adoption service providers to complete Convention tasks. In the United States, private, non-profit adoption service providers currently handle the majority of U.S. intercountry adoption cases. In its final form, the Convention permits party countries to choose to use private, Convention-accredited adoption service providers to perform Central Authority tasks. Specifically, Article 22 permits private, non-profit adoption service providers instead of Central Authorities to complete certain Central Authority functions required by the Convention. As discussed below, however, private, for-profit providers may perform such functions only as authorized under Article 22(2), which imposes limitations that do not apply to private, non-profit providers.

By including a provision allowing non-governmental bodies to provide adoption services, the Convention recognized the critical role private bodies play—and historically have played—in the intercountry adoption process. In the United States, for example, the number of intercountry adoptions from 1989 to 2001 totaled 147,021, and private, non-profit adoption service providers handled most of those adoptions. Recognizing, also, the role of private, for-profit adoption service providers in the United States, the Senate gave its advice and consent to the ratification of the Convention subject to a declaration, pursuant to Article 22(2) of the Convention, that U.S. Central Authority functions under Articles 15 to 21 of the Convention may be performed by approved private, for-profit adoption service providers. (146 Cong. Rec. S8866 (daily ed. Sept. 20, 2000)).

Consistent with Article 22 of the Convention and the declaration just discussed, the IAA establishes a system to accredit private non-profit, and to approve for-profit, adoption service providers and outlines specific standards the private providers must meet in order to become accredited agencies (in the case of non-profits) or approved persons (in the case of for-

profits and private individuals). The proposed regulations focus exclusively on this essential process of accrediting agencies and approving persons that wish to offer or provide adoption services in Convention cases.¹ These regulations contain detailed and comprehensive standards intended to ensure that the United States complies with the Convention, which requires that accredited agencies and approved persons be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption, and be subject to supervision by competent authorities of the Convention country as to their composition, operation, and financial situation. Accredited agencies and approved persons must also comply with the requirements of Article 32 of the Convention, which provides that no one shall derive improper financial or other gain from activity related to an intercountry adoption; only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid; and the key personnel of the agencies and persons involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered. These proposed regulations reflect those Convention requirements.

D. Ability of U.S. Accredited Agencies and Approved Persons To Operate in Other Convention Countries

Once accredited or approved, an agency or person may offer or provide adoption services in the United States in Convention cases. However, under Article 12 of the Convention, a private body accredited in one Convention country may act in another Convention country only if the competent authorities of both countries have authorized it to do so. Thus, U.S. accredited agencies and approved persons are not automatically entitled to operate in other Convention countries. In practice, this means that even if a U.S. agency or person is accredited or approved in the United States, another Convention country may choose to work with only certain U.S. accredited agencies or approved persons.

Currently some Convention (and non-Convention) countries require U.S.

agencies and persons to be accredited under the laws and standards of that Convention country. This practice may well continue. The Department is hopeful that, to avoid duplicative accreditation processes, and as permitted by Article 12 of the Convention, other Convention countries will recognize the accreditation or approval granted by the United States and permit U.S. accredited agencies and approved persons to act inside the other Convention country without requiring any further accreditation. The Department is mindful, however, that some U.S. agencies or persons, especially those that work in more than one Convention country, may well have to go through several costly accreditation processes. One of the rationales for drafting comprehensive, stringent standards for U.S. accreditation and approval is to encourage other Convention countries to accept U. S. accreditation or approval and not require further accreditation or approval.

E. Timing of Implementation

In accordance with the U.S. Senate's conditions for ratification, the Convention will not actually come into force for the United States until the United States is able to meet its obligations under the Convention and the U.S. instrument of ratification is deposited. Once the instrument of ratification is deposited, the Convention will come into force for the United States on the first day of the month following the expiration of three months after the deposit (thus, after a period of not less than three months and not more than four months).

Practically speaking, the United States must have accredited bodies ready to provide adoption services before the Convention enters into force for the United States. Thus, the regulations contemplate that the accrediting entities will be able to use the standards in subpart F of the regulations to begin accrediting agencies and approving persons before the Convention enters into force for the United States. This process of accrediting agencies or approving persons prior to the actual entry into force of the Convention is necessary so that there are agencies and persons legally permitted to provide adoption services as of the date the Convention first enters into force for the United States.

These regulations, therefore, will be effective prior to the date the Convention comes into force for the United States to enable the Department and its designated accrediting entities to perform the time-consuming task of

accrediting and approving private bodies. Certain sections of these proposed regulations will not be operative, however, until the Convention enters into force for the United States. The proposed regulation by its own terms makes these sections effective only after entry into force of the Convention. For example, the provision that requires all agencies and persons to be accredited or approved will become effective on the date that the Convention enters into force. This approach is consistent with section 505(a)(2) of the IAA, which provides that the IAA mandatory accreditation and approval requirement take effect upon the entry into force of the Convention for the United States. The Department will announce the entry into force date for the Convention in the **Federal Register**. Until the Convention enters into force for the United States, agencies and persons may continue to provide adoption services without accreditation or approval, even for adoptions involving other countries that are parties to the Convention, if permitted by such Convention countries.

In summary, the steps taken prior to ratification of the Convention are: (1) The Department, after publication of these proposed regulations open to notice and comment, publishes the final regulations; (2) The Department identifies and retains accrediting entities; (3) The designated accrediting entities begin the process of evaluating those agencies and persons that applied by the "transitional application date" (see Section C, Subpart D—Application Procedures for Accreditation and Approval in this Preamble); (4) The Department will set and announce a "deadline for initial accreditation and approval" depending upon a number of factors, including the number of agencies and persons that apply by the transitional application date and the time the accrediting entities require to evaluate these first applicants for accreditation and approval; (5) The accrediting entities will send to the Department a list of agencies and persons that have been accredited or approved by the deadline for initial accreditation and approval; (6) The Department will deposit the instrument of ratification and identify those agencies and persons that are accredited or approved to provide adoption services for Convention adoptions. The Convention does not come into force for the United States until three to four months after the instrument of ratification is deposited.

In addition, section 505(b)(1) and (2) of the IAA provides special transition

¹ The Convention uses the terms private accredited bodies and bodies or persons to refer to adoption service providers. The IAA uses the terms agency and person and accredited agency and approved person to encompass such providers. The IAA terms—agency or person and accredited agency or approved person—will be used from this point forward in the Preamble and are defined in subpart A of part 96.

rules for adoption cases that are pending when the Convention enters into force for the United States. For immigrating children, the Convention and the IAA will not apply where a petition regarding adoption was filed with DHS before the Convention entered into force for the United States. For emigrating children, the Convention and the IAA do not apply if the prospective adoptive parent(s) have filed the appropriate application to initiate the adoption process in their country of residence before the Convention entered into force for the United States. The regulations elaborating on these IAA transition rules for Convention cases are not covered in this set of proposed regulations on accreditation and approval. Rather, the regulations for section 505(b)(1) and (2) of the IAA will be in part 97, which will cover intercountry adoption procedures and will be proposed in a future rulemaking.

IV. The Intercountry Adoption Act of 2000 (IAA)

A. Passage of the IAA

The IAA implements the Convention in the United States. In 2000, Congress considered and passed the IAA during approximately the same time period that the Senate was considering the Convention. The President transmitted the Convention to the Senate for its advice and consent on June 11, 1998. (S. Treaty Doc. 105–51 at III (1998)). The treaty was read for the first time and then transferred to the Senate Committee on Foreign Relations. To accompany the Convention, the Department, with the involvement of the INS (now part of DHS) and the Department of Health and Human Services (HHS), had drafted and transmitted to both houses of Congress proposed implementing legislation—entitled the Intercountry Adoption Act. That legislative proposal was not introduced in Congress but influenced the implementing legislation that was eventually introduced. On March 23, 1999, Senators Helms and Landrieu and other co-sponsors introduced the Intercountry Adoption Convention Implementation Act of 1999. (S. 682, 106th Cong. 1st Sess. (1999)). (A companion bill, identical to S. 682, was introduced in the House by Congressman Burr (H.R. 2342, 106th Cong. 1st Sess. (1999)). On September 22, 1999, Congressman Gilman, along with 36 co-sponsors, introduced the Intercountry Adoption Act of 1999. (H.R. 2909, 106th Cong. 1st Sess. (1999)). The Senate Foreign Relations Committee held hearings on October 5, 1999, and also issued a committee

report on S. 682 (Report of the Senate Committee on Foreign Relations on the Intercountry Adoption Act of 2000, 106th Cong. 2nd Sess., S. Rep. No. 106–276 (2000)). The House International Relations Committee held hearings on H.R. 2909 on October 29, 1999, and also issued a committee report. (Report of the House Committee on International Relations on the Intercountry Adoption Act, 106th Cong. 2nd Sess., H.R. Rep. No. 106–691 (2000)).

S. 682/H.R. 2342 and H.R. 2909 differed in some major provisions. In particular, S. 682 provided for the Department to have responsibility for oversight of the accreditation and approval process. In contrast, H.R. 2909 designated HHS as the Federal oversight agency, as proposed by the Administration. Ultimately, the Department was given the responsibility for establishing and overseeing the accreditation and approval process. A consensus was reached on other controversial issues and H.R. 2909, as amended, was passed by both the House and the Senate. It was signed by the President on October 6, 2000, and became Public Law No. 106–279.

B. Overview of Substantive Provisions

The IAA's purposes reflect and complement those of the Convention. They are: To protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such an adoption is in a child's best interests; and to improve the ability of the Federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. To accomplish these goals, the IAA provisions: (1) Set forth minimum standards and requirements for accreditation and approval; (2) make substantive changes to the Immigration and Nationality Act (INA) with respect to Convention adoptions; (3) set requirements for completing individual adoptions; and (4) confer specific responsibilities on the Department and other government entities for carrying out the mandates of the Convention and the IAA.

The IAA designates the Department as the Central Authority for the United States. As Central Authority, the Department has a number of important programmatic responsibilities, including: Acting as liaison with other Central Authorities; coordinating activities under the Convention; monitoring and facilitating individual cases involving U.S. citizens, where

necessary; and establishing and managing a Case Registry of intercountry adoptions. Some important functions related to the Convention are also vested in the Department of Justice, DHS, and State courts. The Secretary of Homeland Security will assume certain functions vested in the Attorney General and the INS by the IAA relating to the Immigration and Naturalization Service's responsibilities, pursuant to the Homeland Security Act of 2002, Public Law 107–296 (Nov. 25, 2002), as amended by section 105 of the Homeland Security Act Amendments of 2003. (See Consolidated Appropriations Resolution, Public Law 108–7, Feb. 20, 2003). The Department expects that the Attorney General will retain responsibility for enforcement of the criminal and civil penalties imposed by section 404 of the IAA. Once DHS has identified the specific bureau that will assume the functions delegated to the Attorney General or the INS under the IAA, the Department will provide that information.

Most relevant to these regulations, the IAA confers on the Department the authority and responsibility for establishing and overseeing a system for accrediting agencies and approving persons that wish to provide adoption services in Convention cases. Consistent with the Convention's acceptance of the use of private bodies, the IAA authorizes the use of accredited agencies and approved persons to complete certain case-specific Central Authority functions, rather than relying exclusively on Federal or State entities. The IAA provides detailed requirements for accreditation and approval. Rather than mandating direct Federal accreditation of agencies and persons, the IAA authorizes the Department to designate one or more accrediting entities to accredit agencies and to approve persons that meet the requirements for such entities set forth in these regulations.

The Convention and the IAA dramatically change the use of accreditation in the adoption field. Traditionally, accreditation has been a voluntary credentialing process used to encourage sound and ethical practices. Under the IAA, accreditation or approval pursuant to these regulations is now mandatory for agencies and persons that provide certain adoption services in Convention cases.

To enforce this mandatory accreditation and approval requirement, the IAA establishes civil and criminal penalties. (Pub. L. 106–279, section 404). With limited exceptions set forth in section 201(b) of the IAA and in subpart C of these regulations,

individuals or agencies that offer or provide adoption services in connection with a Convention adoption without either (a) becoming accredited or approved in accordance with these regulations, or (b) acting under the supervision and responsibility of an accredited agency or approved person are subject to civil money penalties of \$50,000 for the first violation and \$100,000 for succeeding violations under section 404(a) of the IAA. Under section 404(c), the knowing or willful failure to become accredited or approved or to act under supervision and responsibility, as required, carries a penalty of imprisonment for not more than five years or fines of up to \$250,000, or both. In promulgating these regulations, the Department believes that it is critical to alert all agencies and persons that the failure to obtain accreditation or approval or to act under the supervision and responsibility of an accredited agency or approved person could cause the imposition of the IAA's severe civil or criminal penalties. Subpart C of the regulations, which contains the rules on who must meet the accreditation and approval requirements and incorporates the narrow statutory exemptions from accreditation or approval, should be consulted and carefully studied for guidance.

C. Distinction Between "Agency" and "Person"

The Convention effectively differentiates between non-profit bodies and for-profit entities and individuals. The Convention favors the use of non-profit bodies, and Article 11 of the Convention requires that "accredited" bodies "pursue only non-profit objectives"—a requirement incorporated into these regulations by reference to non-profit tax treatment under section 501(c)(3) of the Internal Revenue Code or relevant State law. Notwithstanding this preference, the Convention in Article 22 also permits other bodies and persons—herein referred to as "for-profits"—to provide Convention adoption services. Persons (for-profit entities and individuals) must, however, meet the requirements of Article 22(2) of the Convention, which are not applicable to non-profit agencies. Article 22(2) requires persons to have the integrity, professional competence, experience, accountability, ethical standards, and training or experience to work in the field of intercountry adoption. Moreover, Article 22(4) of the Convention explicitly allows party states to declare that the adoption of their children may take place only if the functions of Central Authorities are performed by public authorities or

accredited agencies (effectively, for U.S. purposes, private non-profits) and not by approved persons (effectively, for U.S. purposes, "for-profits").

These regulations reflect the Convention distinction by utilizing different terms to describe non-profit agencies versus for-profit entities and individuals. Under these regulations, agency means a private, non-profit organization licensed to provide adoption services in at least one State. It does not include individuals or for-profit entities. Person means an individual or for-profit entity (including a corporation, company, association, firm, partnership, society, or joint stock company) providing adoption services—consistent with the definition in section 3(14) of the IAA. To be consistent with the Convention's requirement that only non-profit agencies be accredited, the IAA provides for the accreditation solely of agencies and uses a different term—approval—to describe the status of individuals and for-profit entities. (See Pub. L. 106–279, section 203). Therefore, under the IAA's rubric, agencies are eligible to seek accreditation while persons (individuals and for-profit entities) are eligible only to seek approval.

The Department has made every attempt within the given statutory framework to ensure that persons adhere to the same requirements as non-profit agencies. Thus, the standards in subpart F of part 96 (with limited exceptions to recognize the special circumstances of private individuals) apply both to agencies seeking accreditation and to persons seeking approval. Sections 96.31 and 96.35 also contain provisions unique to persons seeking approval. They mainly provide standards tailored to the different corporate structures used by such persons or contain more rigorous provisions than those applicable to agencies in light of the additional Article 22(2) provisions on professional competence that apply only to persons. Also, the Convention allows only accredited agencies, not persons, to assume responsibility for preparing a home study or a child background study. The proposed rules, therefore, provide that, when an approved person or a non-accredited agency, rather than an accredited agency, completes a home study or child background study, it must have the home study or child background study approved by an accredited agency. The approval requirement is included so as to comply with Article 22(5) of the Convention which requires that home studies and child background studies be prepared

under the responsibility of accredited agencies or public authorities.

Although the IAA allows approved persons to provide adoption services in Convention cases, some State laws do not. These regulations are not intended to affect any State laws that may prohibit such persons—either individuals or for-profit entities—from providing adoption services in a particular State. If a State does not allow persons (whether the prohibition is against individuals or for-profits or both) to operate in a particular State, these regulations do not in any way preempt such State law. The Department welcomes comments on the interplay between State law and the IAA provision for approval of persons. The Department's goal is to follow the IAA and allow persons to be approved without preempting State laws that may prohibit individuals or for-profit entities from providing adoption services in a particular State.

Persons seeking approval should note that these regulations require them to be licensed or otherwise authorized to provide adoption services in at least one State. If in the future all States were to prohibit for-profit entities from providing adoption services, then no for-profits could become approved under these regulations. Similarly, if in the future all States prohibited individuals from providing adoption services, then no individuals could become approved under these regulations.

According to Article 22(4) of the Convention, Convention countries may declare that adoptions of children habitually resident in their territory may take place only if the functions of the Central Authority in the receiving country are performed by public authorities or by non-profit accredited bodies. Thus, individual Convention countries may refuse altogether to work with approved persons and may be willing to work only with accredited agencies.

D. Federalism Issues

The Convention and the IAA for the first time require Federal regulation of agencies and persons for purposes of intercountry adoptions. Historically, State law alone regulated agencies and persons. The IAA contains a specific provision disfavoring preemption of State law unless State law provisions are inconsistent with the Convention or the IAA. (Pub. L. 106–279, section 503(a)). The Department throughout the regulations has been careful to defer to State law, especially in the case of U.S. emigrating children whose adoptions will continue to be covered mainly by

State law, even when not explicitly required by the IAA. In particular, the regulations require agencies and persons to comply with any applicable licensing and other laws and regulations in the States in which they operate, and do not supplant existing State licensing and other laws and regulations. For example, when a State requirement exceeds a standard in subpart F of part 96, the agency or person must also comply with the State requirement as necessary to ensure that it maintains its State license. Similarly, when the IAA standard for accreditation or approval is more stringent than a State requirement, the agency or person must meet the IAA standard as well as the State standard. Also, the regulations utilize State law definitions whenever possible. For example, the regulations defer to State law to define "best interests of the child" instead of developing a Federal definition that would replace existing State law definitions. Finally, a number of the standards, such as those relating to internet use, expressly require observance of State as well as Federal law.

The impact of the Convention and the IAA is clearest in cases of U.S. children emigrating from the United States to a Convention country in connection with their adoption. Previously, State law alone governed cases of children emigrating for adoption, whereas there has been Federal involvement (through the immigration laws) in incoming cases. Now adoptions involving emigration to Convention countries must comply with the procedures and safeguards of the Convention (such as those of Convention Articles 4 and 17) and the IAA, which include requirements that may not currently exist in State law. Under these regulations, the burden of making the majority of the Convention and the IAA determinations for emigrating children is unavoidably placed on State courts. The Department assumes that these determinations generally will be made in the context of adoption or placement proceedings that would occur in any event, and that the States may charge fees to cover the costs of these services. Nevertheless, the Department is sensitive about imposing additional burdens on States; therefore, the regulations do not call for State court action other than as strictly required to permit an adoption under the Convention or the IAA. States that do not wish to undertake even those minimal requirements may refrain from permitting Convention adoptions or placements in their jurisdictions.

Also, throughout the preliminary input phase, State agencies were asked

to submit comments on the draft regulations and such input was used in the drafting of the proposed regulations. The Department welcomes comments from State and local agencies and tribal governments on the proposed regulations and in particular seeks comment on the standards covering cases in which a child is emigrating from the United States in §§ 96.53, 96.54, and 96.55 of subpart F.

E. Economic Impact/Effect on Small Entities

One of the most challenging issues facing the Department was how comprehensive and stringent these standards should be, bearing in mind the desirability of minimizing the cost and burden on agencies and persons, especially on small entities. The Department throughout the development of the proposed regulations considered the economic burden of this completely new Federal level of regulation. Some groups called for extensive Federal regulation of agencies and persons without acknowledging the added costs such standards would entail. The Department has sought to strike a balance—using the IAA statutory standards as guidance—between the need to avoid costly over-regulation of what traditionally has been an area regulated almost exclusively by State law and the need to have comprehensive standards designed to ensure that Convention and IAA requirements are met and to improve the quality of services provided to birth families, adoptive families, and children. The Department believes that the overall economic impact of the proposed regulations has been minimized using this approach; therefore, there is not sufficient impact to warrant preparation of a regulatory impact analysis (RIA) under Executive Order 12866 or other similar mandates. In particular, the Department has analyzed the proposed regulations and concluded that they will not have an annual effect on the economy of \$100 million or more or adversely affect in any material way the economy, jobs, productivity, the environment, public safety, or health.

The Department arrived at this conclusion based on the information provided from adoption service providers, accrediting entities, and others in the adoption community during the preliminary consultation process. The Department also relied on its statistics regarding the number of intercountry adoptions per year and the number of intercountry adoptions per year with other Convention countries. The Department used the data on the

number of intercountry adoptions for FY 2002, FY2001, and FY 2000. Using the information on the range of costs of providing adoption services gathered during the consultative process and the Department's data on the number of intercountry adoptions per year, the Department was able to make some estimates about the current economic status of the non-profit, adoption service provider sector of the economy.

For FY October 2001 to September 2002, U.S. citizens adopted 21,378 children from other countries. For FY October 2000 to September 2001, U.S. citizens adopted 19,224 children from other countries. For FY October 1999 to September 2000, U.S. citizens adopted 18,477 children from other countries. Thus, using this historical data, the Department assumed that the typical number of intercountry adoptions per year is 20,000. The cost for intercountry adoption and related services to parents may range from \$20,000 to \$30,000 per case. Assuming 20,000 intercountry adoption cases per year, the Department estimates that the total expenditures for adoption services and related costs and the total annual gross revenues for non-profit adoption service providers could range from between \$400 to \$600 million per year (an estimate that includes the costs of travel and accommodations as well as charges imposed by the sending countries on the adoptive parents). The total costs of providing adoption services could vary from year to year depending upon the number of intercountry adoptions as well as other factors. However, even if the Department uses adoption services cost estimates that include travel and local services, the current total size for the non-profit sector to be regulated is small—that is, between \$400 to \$600 million.

Additionally, in intercountry adoption cases, a significant portion of the reported costs of providing services in a particular adoption case may include the costs of travel and accommodations for the parents and child during the adoption process as well as local costs imposed by the sending country. These costs are incurred directly by the adoptive parents or are charged by the adoption service provider as fees and passed on to the public or other entities in the sending country. The cost of providing intercountry adoption services, excluding the cost of travel and accommodations and the costs of local services, varies widely depending on the provider as well as the country of origin for the child. The travel and local services costs are unlikely to be affected by the implementation of this proposed

rule. The Department estimates that the cost of providing intercountry adoption services, excluding travel and local services costs, may be from 25% to 80% lower than the estimated range of \$20,000 to \$30,000 per adoption case. If it is assumed that the costs would be 25% less than the estimated range, then the costs of providing adoption services may range from between \$15,000 to \$22,500 per adoption case. If it is assumed that the costs would be 80% less than the estimated range, then the costs of providing adoption services may range from \$4,000 to \$6,000 per adoption case. It is this segment of adoption services costs (which excludes travel and local in-country services costs) that is most likely to be affected by the proposed rule. Thus, the total size of the non-profit sector to be regulated, rather than ranging from \$400 to \$600 million, may be viewed as ranging from \$80 million to \$450 million.

At least initially, the number of agencies and persons affected by the proposed rule is likely to be small because the current number of cases subject to the Convention is small. Currently, most intercountry adoptions to the United States are from non-Convention countries. For example, for FY 2002, the number of cases with Convention countries was 1,433; for FY 2001, the number of cases with Convention countries was 1,680; for FY 2000, the number of cases with Convention countries was 2,025. (The number of intercountry adoption cases from Convention countries to the United States to date has changed from year to year for a variety of reasons, including because new countries ratify or accede to the Convention, or sometimes a Convention country declares a moratorium on intercountry adoptions.) In future years, any increase in the cost of the rule may be incremental, as new countries join the Convention and agencies and persons that assist with adoptions in those countries are required to come into compliance.

Using the data on the number of adoptions from Convention countries, the Department notes as follows: For FY 2002, the percentage of Convention cases out of a total of 21,378 was 6.7%; for FY 2001, the percentage of Convention cases out of a total of 19,224 was 8.7%; for FY 2000, the percentage of Convention cases out of a total of 18,477 was 11.0%. It is only those agencies and persons who will be providing adoption services in cases where the other country is a party to the Convention that will have to comply immediately with the requirement to become accredited or approved.

Therefore, intercountry adoptions with countries party to the Convention account for adoption services costs in the range of \$28.6 million to \$43.0 million when estimated travel/accommodations and local services costs are included in the cost of providing adoption services in a case. Similarly, intercountry adoptions with countries party to the Convention account for adoption services revenues in the range of \$5.7 million to \$32.3 million when estimated travel/accommodations and local services costs are excluded. Under this analysis, the Department's estimates show that the total costs for adoption services provided (which could range from \$5.7 million to \$43.0 million) in the number of cases immediately subject to the proposed rule is very likely to be less than the \$100 million Executive Order 12866 threshold.

Furthermore, the Department expects the total cost burden of the rule to be substantially less than the current total estimated cost of providing adoption services regardless of which analysis is used to calculate the total yearly costs associated with providing adoption services. During the consultation process thus far, the Department has not received any information that would indicate that the cost to the adoption community of compliance with the proposed regulations would be near the current cost of providing adoption services. Rather, all indications are that the cost to comply will be a fraction increase in the current cost of providing adoption services. Therefore, the Department considers the total cost of adoptions to be a reasonable upper limit on the possible cost of the proposed rule. The Department, however, requests comments on its cost estimates and in particular requests that commenters address the following questions: (1) How many agencies are likely to seek full accreditation in accordance with subpart F rather than temporary accreditation under subpart N? (2) What are accrediting entities likely to charge the agencies and persons for the accreditation and approval process? (3) Is the estimated cost of providing adoption services (estimated to range from \$20,000 to \$30,000) in a particular case a current reasonable estimate? (4) What proportion of the costs of rendering adoption services are pass-through costs forwarded to foreign entities providing local services in the sending country? (5) What proportion of the costs for adoption services in a particular case is for the costs of travel and accommodations? (6) How many persons (for-profits and individuals)

plan to seek approval? (7) What are the estimated costs agencies and persons will have to expend to comply with the standards in subpart F? Specifically, commenters should provide information on the costs of obtaining insurance coverage as required by the standards in § 96.45 and § 96.46; the costs of retaining personnel that meet the professional and educational requirements in § 96.37; and the costs of providing the mandatory training to prospective adoptive parent(s) in § 96.48. Comments or concerns about the cost impact of any other standard in subpart F or subpart N are welcome. It would be helpful if commenters supply information and data to support any comments on these enumerated issues.

The Department also considered the potential impact of these regulations on small entities, as required by the Regulatory Flexibility Act and Executive Order 13272. The Department has sought to ensure that the standards do not unnecessarily or adversely affect the currently sound practices of small agencies and persons, especially since almost all of the agencies and persons covered would meet a Small Business Administration (SBA) definition of a small entity for this type of non-profit service provider. Concerns about minimizing any increases in the cost of intercountry adoption and any unnecessary adverse impact of these regulations on small entities were of utmost importance in the Department's decision-making process, and great care was taken to address these concerns while still seeking to ensure compliance with the Convention and the IAA mandate for comprehensive regulation of adoption service providers. To minimize the impact on small entities, the Department developed regulations that are performance-based accreditation standards (see subpart F) as opposed to design-oriented, licensing criteria. Consistent with the IAA, the regulations also provide a special tiering set-up and a different implementation timetable for small agencies by allowing for a temporary accreditation process (see subpart N). Also, again consistent with the IAA, the regulations contain exemptions for small providers, such as home study preparers, and permit agencies and persons to act as supervised providers rather than requiring them to complete the full accreditation or approval process (see subpart C).

The Department is cognizant that the cost of providing adoption services is closely related to the level and type of regulation. The Department is aware that ultimately the costs of accreditation and approval will be passed on to

adoptive parents and may increase the cost of providing services in each individual adoption. Moreover, the Department also weighed the difficulties for families of absorbing additional costs for adoption services against the requests, often from adoptive families, for better services and more public information about agencies and persons, so that families could compare providers before selecting an adoption service provider. The Department also took into consideration the relevant assistance available to families, such as the Federal adoption tax credit, to offset increased costs of services. Therefore, the Department sought at all times to strike the appropriate balance among competing objectives. The Department understands, however, that revision of these standards may be necessary after further public comment and particularly welcomes comment on the effect of these regulations on both non-profit and for-profit small entities. The Department requests that agencies or persons who submit such proposals provide information on their size, non-profit or for-profit status, and identify what specific standards should be added, modified, or deleted, and include justifications for any such suggestions.

F. The IAA Exemptions to the Paperwork Reduction Act

Pursuant to 44 U.S.C. 3506(c), 3507, and 3512, which were enacted by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, agencies normally are required to submit to OMB for review and approval new "collections of information," including any collections of information inherent in a final rule. Information collections under the PRA are defined, in 44 U.S.C. 3502(3), to include "obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for * * * answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons." OMB has interpreted this definition to include information collections regardless of whether they are "mandatory, voluntary, or required to obtain or retain a benefit." (5 CFR 1320.3(c)).

Section 503(c) of the IAA specifically exempts sections 104, 202(b)(4), and 303(d) of the IAA from these PRA requirements. (Pub. L. 106-279, section 503(c)). Given these statutory exemptions to the PRA, the Department has determined that the collections of information in this proposed rule are exempt from PRA requirements, with

the exception of the collections in §§ 96.91 and 96.92 of subpart M, which are discussed in the PRA analysis in the Regulatory Review portion of the Preamble (Part VI, Section G).

The implications of the PRA exemptions in section 503(c) of the IAA are that, with respect to the exempted information collections, the Department is not required to follow the procedures established by 44 U.S.C. 3506(c) for reviewing information collections, allowing public comment on them, and then certifying that they meet the requirements set forth in that section. In addition, the exemption from 44 U.S.C. 3507 means that the Department may sponsor the exempted collections of information without complying with 44 U.S.C. 3506, and that the Department is not required to obtain a control number from OMB indicating its approval of the collections. Nor are the exempted information collections subject to the three-year validity period limitation imposed by 44 U.S.C. 3507(g), after which covered information collections must be revalidated. Finally, the exemption from 44 U.S.C. 3512 means that the Department may require compliance with the exempted information collections, and may impose penalties for failing to comply, even though the collections will not display an OMB control number. Consistent with the IAA's accreditation and approval scheme, the consequences of failing to provide or retain information, or of otherwise failing to comply with the requirements of an exempted information collection, will be felt through the accreditation and approval process itself (including, when appropriate, through denial of accreditation or approval or the imposition of adverse actions which can result in loss of accreditation or approval).

The IAA exemptions from the PRA were sought by the Department because of concerns that application of the normal PRA requirements would have been largely inconsistent or incompatible with the accreditation/approval and oversight framework established by the IAA. First, the IAA mandates a number of reporting requirements, some of which are driven by the need to ensure U.S. compliance with the Convention. Without an exemption, the PRA and its three-year limitation on collections of information would have interposed a periodic justification process that would have been unnecessary in view of the IAA's permanent and very specific statutory reporting requirements and that could have impeded collection of information

necessary to meet our Convention obligations.

Second, the IAA leaves much of the responsibility for accreditation and approval to the private sector and adopts a private sector model for accreditation/approval that is fundamentally inconsistent with the information collection controls imposed by the PRA. An accreditation process by its nature requires the preparation and presentation of documentation to an accrediting entity to demonstrate qualifications. This process alone typically takes a year or more in existing accreditation contexts. Monitoring by an accrediting entity once accreditation or approval is granted, to determine whether accreditation or approval can be maintained, similarly requires the retention and sometimes the preparation of records for inspection by an accrediting entity. Consistent with an accreditation model, and with the decision to rely heavily on the private sector to implement the Convention in the United States, the IAA requires adoption services providers to be accredited or approved by a private, non-profit accrediting entity (or if so designated as an accrediting entity, by a State public body). The IAA, however, also ensures appropriate Federal oversight and compliance with the Convention by requiring any accrediting entity to act pursuant to regulations, including accreditation/approval standards, promulgated by the Department. As in other accreditation contexts, the IAA clearly contemplates an extended start-up period in which providers demonstrate to any one of the designated accrediting entities that they meet the standards for accreditation/approval. The IAA also specifically provides that the accreditation/approval period will be three-to five-years, and that there will be continuous monitoring of accredited agencies and approved persons by an accrediting entity in light of the standards during their period of accreditation or approval.

Imposition of the PRA requirements on this process could have burdened it to the point where it could not function. It would be difficult to adapt the PRA process in a meaningful way to the IAA's accreditation/approval process, which fundamentally involves the ongoing measurement of performance against standards through document review. The PRA's provision for the expiration of collections of information after three years, unless reviewed and renewed, would also have directly interfered with the need for settled procedures and standards that both the accrediting entities and the providers could be sure would remain in effect

during both the period of application and any selected period of accreditation or approval. (Under the IAA, the Secretary may select an accreditation/approval period of three, four, or five years.)

The IAA exemptions from the requirements of the PRA must be understood in this context. The Department understands that the exemptions were intended to be construed broadly to facilitate implementation of an accreditation/approval process as envisioned by the IAA. At the same time, however, the IAA expressly requires that these regulations, including the standards for accreditation and approval, be published for notice and comment under the Administrative Procedure Act (APA). Thus, the IAA ensures public participation in the creation of all elements of these regulations, including those that could have effects of the kind normally addressed through PRA review.

As noted, the three provisions of the IAA exempt from the PRA provisions discussed above are sections 104, 202(b)(4), and 303(d). The following explains how these exemptions relate to the proposed regulations, to the extent that they include "information collections" under the PRA:

Section 104 of the IAA. Section 104 of the IAA requires the Department to make annual reports on intercountry adoptions to several congressional committees. The IAA lists the information and data that must be collected and conveyed annually to Congress. To ensure the availability of this information to the Secretary, the proposed regulations include standards addressing the information accredited agencies and approved persons must be prepared to provide to their accrediting entity and the information the accrediting entity must in turn provide to the Secretary. Within subpart F, § 96.43 of the regulations requires the agencies and persons to provide to the accrediting entity the information listed in section 104 of the IAA. Section 96.93 of subpart M of these regulations similarly mirrors the statutory requirements and mandates that the accrediting entity obtain the information from the agencies and persons.

Section 202(b)(4) of the IAA. Section 202(b)(4) of the IAA provides that the accrediting entity's responsibilities shall include "[c]ollection of data, maintenance of records, and reporting to the Secretary, the United States central authority, State courts, and other entities (including on persons and agencies granted or denied approval or accreditation), to the extent and in the

manner that the Secretary requires" (emphasis added). The Department understands the concept of "collection of data" by the accrediting entity "to the extent and in the manner that the Secretary requires" to encompass the Secretary's decisions regarding what data must be provided by the adoption service providers to the accrediting entities and what data may be collected by the accrediting entities in the course of performing any of their duties under the IAA, including deciding whether an adoption service provider can be accredited or approved, conducting oversight activities, and taking enforcement actions. (Pub. L. 106-279, section 202(b)(1)-(3)). The Department, as the lead agency responsible for interpreting the IAA and the IAA's exemptions to the PRA, believes that the IAA's expansive discretionary language (that is, information may be collected "to the extent and manner required by the Secretary") demonstrates that Congress intended the scope of this exemption to the PRA to be broad.

Thus, as developed in these regulations, the exemption covers determining the provider's compliance with the standards for accreditation/approval in subpart F (or, in the case of temporarily accredited agencies, in subpart N). It also covers obtaining information from adoption service providers as they apply for accreditation or approval and in the course of monitoring their performance under the standards. The exemption in section 202(b)(4) of the IAA also extends to information the accrediting entity is required to provide to the Secretary, any entity acting on behalf of the Secretary (including the Complaint Registry, to the extent that it will assist the Secretary in addition to the accrediting entities), and to law enforcement officials and State courts. The exemption thus extends to the portions of these regulations that require such disclosures or that otherwise are intended to ensure that the Department is able to perform its oversight responsibilities under the IAA. As a result of this exemption, the Department has determined that all of the information collections established by these regulations that are not covered by the exemption of IAA sections 104 (discussed above) and 303(d) (discussed below) are covered by the exemption in section 202(b)(4) of the IAA, with the exception of certain collections required under subpart M, as discussed below.

Section 303(d) of the IAA. Section 102(e) of the IAA requires the Secretary and the Attorney General to establish a case registry of all incoming and outgoing intercountry adoption cases,

regardless of whether they occur under the Convention. In furtherance of this requirement, section 303(d) of the IAA requires that all agencies and persons providing adoption services in connection with an "outgoing" intercountry adoption not subject to the Convention file certain information with the Case Registry as required by the Secretary and the Attorney General through joint regulations. (The Department expects these functions of the Attorney General to be assumed by the Secretary of Homeland Security.) The standards for accreditation/approval in these proposed regulations include standards in subpart F at § 96.43 and, for supervised providers, at §§ 96.45(b)(11) and 96.46(b)(11), relating to compliance with the joint regulations contemplated by section 303(d). (The joint regulations have not yet been proposed.) Because IAA section 503(c) exempts section 303(d) from the PRA requirements, these proposed standards, which are designed to promote observance of the requirement of section 303(d), are exempt.

V. The Proposed Implementing Regulations on Accreditation and Approval

A. Public Input on the Proposed Regulations

In the IAA itself, Congress explicitly required the Department, when developing these regulations, to consider the views of the adoption community. Specifically, the IAA provides:

[T]he Secretary shall consider any standards or procedures developed or proposed by, and the views of, individuals and entities with interest and expertise in international adoptions and family social services, including public and private entities with experience in licensing and accrediting adoption agencies. (Pub. L. 106-279, section 203(a)(2)).

The Department took this mandate very seriously and considered the views of the adoption community before drafting this proposed regulation. While a number of changes to current practice will be necessary and desirable to come into compliance with the Convention and the IAA, the Department looked to the adoption community for ideas as to how it should implement its responsibilities. In particular, to comply with the section 203(a)(2) mandate in the IAA, the Department issued a Scope of Work to identify a consulting firm with expertise in accreditation and intercountry adoption. After considering proposals from interested consultants, the Department retained the private firm of Acton Burnell, which undertook

consultations with the public and formulated suggestions for the proposed accreditation regulations in the form of an initial draft. Acton Burnell undertook extensive research and consultation that included review of current, private accreditation standards, analysis of applicable State regulations, and solicitation of input from members of the adoption community, including adoption service providers, professional membership organizations, advocacy groups, coalition groups, birth parents, adoptive parents, adoptees, legal, medical, and social work professionals, Federal and State public bodies, and standard-setting and regulatory professionals.

The Department requested that Acton Burnell establish a multi-disciplinary team of experts in accreditation and intercountry adoption and use an open process designed to ensure that all segments of the adoption community had a full opportunity to provide input at public meetings and to articulate their opinions and concerns. In response, Acton Burnell set up an interactive Web site to keep the public informed about the project. It also created and disseminated two surveys in conjunction with the public meetings—one for agencies and persons and one for prospective adoptive parents, adoptive parents, birth parents, and adoptees. Acton Burnell then announced and convened a public meeting on April 2, 2001, to gather input for the regulations. Any person was permitted to send in statements or other material prior to the first meeting, and copies of such statements were made available to attendees. Additionally, all interested persons were welcome to attend and had the opportunity to address the Acton Burnell team and other attendees. Acton Burnell received considerable public input, including actual proposed standards from various coalition groups as well as statements from adoption research organizations and input from other advocacy groups. It considered the input from all of these sources and used it to produce draft proposed regulations that were made available to the public on a Web site at <http://www.haguereg.org>.

After publishing an initial draft of the regulations, Acton Burnell convened a second set of public meetings on June 18 and 19, 2001, and invited all interested persons to submit written statements. Department personnel attended these meetings. Submitted statements were circulated amongst the attendees and those that had been provided in electronic form were posted on the Web site. After considering all of

the input provided, including, but not limited to, the information from the surveys, the content from written statements sent, and the oral statements given at the public meetings, Acton Burnell produced another draft of the regulations which it submitted to the Department on July 31, 2001. The Acton Burnell team then engaged in extensive consultations with the Department and produced further revised recommended draft regulations. The Department permitted the revised draft regulations to be posted on the Web site in October and December of 2001. The revised draft regulations were posted on the Web site for informational purposes, but not for additional public comment. The multiple draft regulations produced by Acton Burnell and posted on its Web site were not subject to the notice and comment provisions of the APA, 5 U.S.C. 553, because it was understood that the Department would use the Acton Burnell product to formulate its own version of the proposed regulations, which would be subject to APA notice and comment.

B. The Department's Preparation of the Proposed Regulations

The Department has considered all of the public input and the substantive recommendations and proposed draft regulations published by Acton Burnell and submitted to the Department for review. The Department also relied heavily upon the standards for accreditation and approval listed in section 203(b) of the IAA to determine what performance and organizational standards to include in the regulations. It also looked to the legislative history of the IAA, as appropriate, and consulted with interested congressional staff. Most important, the Department looked to the guiding principles provided by the Convention. Where the Convention delineates certain tasks that must be completed for an adoption to proceed, the regulations set a standard governing how accredited agencies and approved persons must complete those tasks.

The Department also tried to ensure that the regulations fully reflect the Federal government's obligations under the Convention and the IAA. Further, the Department crafted the regulations to facilitate practical implementation. The Department also sought to ensure that the regulations protected birth parents, adoptive parents, and children involved in a Convention adoption. In particular, the regulations address certain undesirable and problematic practices that the Department has observed through its current work with intercountry adoptions.

Also, when considering the regulations applicable to accrediting entities, the Department kept in mind the need to find competent and willing accrediting entities. The Department did not want to create inflexible regulations that would discourage any accrediting entity from seeking to be designated. Therefore, the Department examined the current practices of accrediting entities and attempted to create uniform procedures without completely modifying current practice. As a variety of organizations, including State entities, may seek designation, the regulations are intended to be as flexible as feasible to encourage many entities to seek designation. The Department would prefer to have a number of accrediting entities, in order to expedite the initial accreditation and approval phase, to avoid a bottleneck of applicants, and to ensure geographical diversity and competition with respect to fees and services.

The Department recognizes that by proposing to regulate accrediting entities, in addition to entering into the anticipated Agreements between the Department and the accrediting entities, the Department is binding potential accrediting entities to certain practices in advance of their designation. Potential accrediting entities should be aware that they will be bound by the final regulations and that the Department's flexibility in negotiating Agreements will be limited by the final regulations. The Department is mindful that these procedures may be different from the practices that prospective accrediting entities use in other, non-Convention contexts. The Department welcomes public comment on the substance and level of the regulation of accrediting entities and the tasks expected of them, especially from any potential private accrediting entities or State entities that are considering becoming designated accrediting entities.

Finally, the Department considered the views of all members of the adoption community. The Department recognizes that there are many areas of consensus within the adoption community as well as a number of critical issues on which some elements of the community remain divided. The regulations had to draw a number of difficult compromises that are likely to evoke comment or dissent from one or more segments of the adoption community. While preparing the proposed regulations, the Department has tried to balance all the input received and also craft proposed regulations that are consistent with the Convention and the IAA. Also, the

Department had to adapt the work product of Acton Burnell into a Federal regulatory format and to address a number of issues that had not been raised or addressed during the preliminary public input phase. These regulations are now published for notice and comment under the APA, 5 U.S.C. 553, as required by the IAA.

C. Overview of the Proposed Regulations

These regulations contain the following sections: Subpart A contains the definitions governing the use of defined terms throughout these regulations. Subpart B sets forth the process by which the Department will designate one or more accrediting entities to perform the accreditation and approval functions and describes the authority and responsibilities of accrediting entities. Subpart C articulates the accreditation and approval requirements of the IAA by describing which entities are covered by the IAA's requirements, delineating the exceptions to those requirements, and addressing the responsibilities of public bodies that provide adoption services in Convention cases. Subparts D and E describe the process for seeking and being evaluated for accreditation or approval. Subpart F sets forth in detail the standards for accreditation and approval, including the parameters and requirements for working with entities or individuals in the United States or in other Convention countries that are not accredited or approved but will act under the supervision and responsibility of an agency or person accredited or approved in the United States. Subparts G and H address notification of accreditation and approval decisions and the process for renewing accreditation or approval. Subparts I, J, K, and L cover monitoring of and complaints against accredited agencies and approved persons, adverse actions against accredited agencies or approved persons by the accrediting entity, and suspension, cancellation, or debarment of accredited agencies or approved persons by the Secretary. Subpart M addresses how and under what circumstances the accrediting entities will disseminate and report information about accredited agencies and approved persons to the public and to the Secretary. Finally, subpart N sets forth the procedures and standards for temporary accreditation.

1. Subpart A—General Provisions

Subpart A contains the definitions for part 96. Most of the definitions are taken directly from the IAA. If a specific definition substantially affects a particular provision in the proposed

regulation, the definition typically is addressed below in the context of discussion of that provision. The IAA definition of Convention adoption, however, has ramifications throughout the regulations, and thus is addressed in this introductory section.

The definition for Convention adoption was difficult to draft because the Convention and the IAA contain differently worded rules for when the Convention will apply to a particular intercountry adoption. Article 2 of the Convention, provides: "the Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State ('the receiving State') either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin." (S. Treaty Doc. 105–51, Art. 2). Under the IAA, however, a Convention adoption is defined as an adoption of a child resident in a foreign country party to the Convention by a U.S. citizen, or an adoption of a child resident in the United States by an individual residing in another Convention country. (Pub. L. 106–279, 3(10)).

The regulations attempt to clarify the IAA definition of Convention adoption and to harmonize the Convention and the IAA definitions. The IAA definition of Convention adoption, taken literally, would include every adoption in a Convention country by a U.S. citizen. For example, the definition would include children outside the United States adopted in accordance with a country's adoption procedures by a U.S. citizen parent who did not intend to move the child back to the United States. In such situations, the country of origin usually does not treat the adoption as an intercountry adoption covered by the Convention and thus requiring the use of accredited agencies or approved persons. The Department does not believe that the intent of the IAA or the Convention was to treat all adoptions of children in a Convention country by a U.S. citizen parent as intercountry adoptions covered by the Convention. Therefore, the definition of Convention adoption in § 96.2 construes the IAA definition of Convention adoption by specifying the requirement that the child, in connection with his or her adoption, must have moved, or there must be an intent to move the child, from one Convention country to another Convention country. This interpretation of the IAA definition of Convention adoption is intended to make clear that adoptions by a U.S. citizen residing

abroad, even in a country party to the Convention, are not always automatically intercountry adoptions covered by the Convention where the adopting parent is a U.S. citizen. The Department welcomes comment on the definition of Convention adoption, especially from those organizations or agencies and persons who assist U.S. citizens residing abroad with adoptions and from prospective and adoptive parents living abroad as well.

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

Subpart B addresses the Department's designation of accrediting entities. The Department will designate one or more private, non-profit organizations or State-based authorities to act as accrediting entities and enter into agreements with them for this purpose. Such entities will have responsibility for: Evaluating the eligibility of agencies and persons for accreditation or approval and granting or denying accreditation or approval; determining whether to renew accreditation or approval; monitoring and addressing complaints against accredited agencies and approved persons; taking adverse action against accredited agencies and approved persons; and disseminating and reporting information about accredited agencies and approved persons. Subpart B sets forth the eligibility criteria for designation as an accrediting entity, additional requirements for designation, the authorities and responsibilities of accrediting entities, the general content of the Agreement, and what actions the Department may take against an accrediting entity that fails to fulfill its responsibilities as set forth in these regulations or the Agreement.

Subpart B also sets forth the procedures and requirements accrediting entities must follow when setting a fee schedule. Accrediting entities may only charge fees on a cost-recovery basis, and the Department must approve the fee schedule. Additionally, an accrediting entity must make such fee schedules available to the public upon request and specify the fees to be charged to an applicant in a contract between the accrediting entity and the applicant.

Several aspects of the proposed regulations relating to fees deserve particular note. First, the Secretary may require a portion of the fee to cover the Complaint Registry. Second, applicants will pay a single fee that will cover both the pre- and post-accreditation/approval work of any accrediting entity. The fee will be non-refundable even if an application is denied.

The Department seeks comments from all parties, especially from potential accrediting entities, on the regulations governing the accreditation and approval process. In particular, potential accrediting entities should comment on the practical issues these regulations may present for them if they seek to become designated as accrediting entities.

3. Subpart C—Accreditation and Approval Requirements for the Provision of Adoption Services

(a) **Authorized Providers.** Subpart C explains what agencies and persons are subject to the IAA's accreditation and approval requirements and under what conditions they may provide adoption services in Convention cases. Section 201 of the IAA mandates that, once the Convention enters into force for the United States, no agency or person may offer or provide "adoption services," as defined § 96.2(e), in connection with a Convention adoption in the United States unless that agency or person is accredited or temporarily accredited or approved pursuant to these regulations. If the agency or person is not accredited, temporarily accredited, or approved, it must (1) be providing adoption services under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person ("a supervised provider"); (2) be performing an activity that is exempted from the accreditation or approval requirements; or (3) be operating as a public body.

The requirement to be accredited, temporarily accredited, or approved applies regardless of the number of adoption cases for which the agency or person is offering or providing "adoption services." The provision of an adoption service in one Convention adoption case is sufficient to trigger this requirement. Conversely, if an agency or person does not provide "adoption services" in any cases subject to the Convention, this requirement does not apply. If an agency or person is providing adoption services in both Convention and non-Convention cases, the requirement applies.

It is critical to note that the requirements pertaining to accreditation and approval are triggered when an agency or person offers or provides any single one of the six services listed in the definition of "adoption services." (Pub. L. 106–279, section 3(3)). The IAA's definition, which is adopted by these regulations, lists six core, but limited functions, that it calls "adoption services." (Pub. L. 106–279, section 3(3)). Services that are not listed in the definition given in § 96.2(e) of these

regulations are not considered "adoption services" for the purpose of the IAA and therefore do not trigger the requirement that the agency or person providing the service be accredited, temporarily accredited, or approved or be operating under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person. Therefore, for example, if an agency or person provides only services not listed in the definition of adoption services (such as post-placement counseling, a medical evaluation of a child's records or of a video of the child provided by the child's country of residence, pre-adoptive parent training courses or meetings, or post-adoption services for children whose adoptions were dissolved), that agency or person is not required to be accredited, temporarily accredited, or approved or to operate under the supervision and responsibility of an accredited agency, temporarily accredited agency or approved person. Conversely, if a service provided by an agency or person is listed as any one of the six adoption services in the definition of adoption services, the agency or person must be accredited, temporarily accredited, or approved or it must act under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person (unless it is a public body or is only performing an exempted service). For example, securing necessary consents to termination of parental rights and to adoption is one of the defined six adoption services. Thus, a lawyer, who may provide this service now as a legal service, may not do so in Convention cases unless he or she is approved or is doing so as part of an accredited agency, temporarily accredited agency, or an approved person or is acting under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person.

When determining whether an activity is included in the definition of adoption services, the reader must pay close attention to the language used in the list of services. For example, post-placement monitoring, but not post-placement counseling, is included in the definition of "adoption services." Therefore, the former triggers the requirement, but the latter does not. Similarly, one listed adoption service is "identifying and arranging an adoption." An agency or person that both identifies a child for adoption and arranges the adoption would be covered by the requirement. On the other hand, a magazine or TV show or newsletter,

which simply posts pictures and information about children waiting for adoptive placements on behalf of other agencies, persons, or public bodies, would not be covered. These media companies are not covered because they are only communicating information on a child awaiting placement, rather than both identifying a child for adoption and arranging the adoption.

Although some of the preliminary public input asserted that Congress did not intend for each single, named adoption service to trigger the accreditation, approval, or supervision requirement, the Department has rejected such an interpretation of the IAA. Instead, the Department interprets the IAA as mandating that the provision of any one of these six adoption services triggers the requirement that an agency or person be accredited, temporarily accredited, or approved or operate under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person (unless it is a public body or is only performing an exempted service). The alternative reading—that the requirement is triggered only when an agency or person actually provides all six services—would nullify the protective intention, capacity, and effect of the IAA. Such a reading would permit an agency or person to decline to provide one of the enumerated adoption services and thereby evade the requirement.

(b) **Accreditation and Approval Versus Acting as a Supervised Provider.** Although the IAA is clear that an agency or person wishing to offer or provide adoption services in cases subject to the Convention must be accredited, temporarily accredited, or approved or operate under the supervision of an accredited agency, temporarily accredited agency, or approved person (unless it is a public body or providing only an exempted service), it does not provide guidance on how to choose between these options. The Department understands that each agency or person will face a difficult choice in making this decision and is not able to provide specific advice on what is best for each individual agency or person. However, the Department believes it is helpful to underscore the ramifications of choosing between being accredited/approved and being a supervised provider. First, agencies and persons that do not become accredited, temporarily accredited, or approved must be supervised by an accredited agency, temporarily accredited agency, or approved person (unless they are a public body or are providing only an exempted service in the case). Second,

agencies and persons that do not become accredited, temporarily accredited, or approved, and instead act as a supervised provider, are not subject to all of the standards in subpart F. They are, however, subject to the standards contained in § 96.45 (supervised providers in the United States) or § 96.46 (supervised providers in other Convention countries) of subpart F. Third, agencies and persons that do not become accredited, temporarily accredited, or approved cannot operate as the primary provider in a Convention case.

(c) Primary Providers. These regulations establish as a principle of accreditation and approval that an accredited agency, temporarily accredited agency, or an approved person must identify itself as the "primary provider" in each Convention case. The primary provider must be an accredited agency, temporarily accredited agency, or approved person. It cannot be a supervised provider. If there is only one accredited agency, temporarily accredited agency, or approved person among the agencies and persons providing the six adoption services (as defined), then that one inherently must act as the primary provider. Where more than one accredited agency, temporarily accredited agency, or approved person is providing services in the same Convention case, and therefore more than one agency or person is eligible to act as the primary provider, the agency or person performing the tasks listed in § 96.14(a)(1)–(4) must be designated as the primary provider. Whether the accredited or temporarily accredited agency or the approved person is providing all of the adoption services itself or is using supervised providers or other providers to provide the six adoption services, the regulations also establish, as a principle of accreditation and approval, that all six of the services listed in the definition of adoption services must be provided in each Convention adoption case.

The primary provider under the accreditation and approval standards has two principal responsibilities. First, the primary provider is responsible for ensuring that all six of the adoption services listed in the definition of "adoption services" are provided in each Convention case. Second, the primary provider is responsible for supervising non-accredited agencies and non-approved persons that are providing adoption services (as defined) in the case. The requirements and parameters for providing supervision can be found in §§ 96.45 and 96.46.

The primary provider principle is appropriate and necessary for a number of reasons. Although the IAA is clear that agencies and persons providing adoption services in a Convention case must either be accredited, temporarily accredited, or approved or supervised, it is silent on how supervision will be provided and how providers in the same Convention case must coordinate adoption service delivery. These regulations provide that framework through the creation of the primary provider requirement incorporated into the accreditation and approval standards as appropriate. Also, to provide clarity in response to the numerous inquiries about the requirement during the preliminary public input phase, the primary provider principle appears in the regulations as a freestanding provision in § 96.14, which is cross-referenced to the definition of primary provider in § 96.2(cc).

The Department is aware that this principle both reflects and changes current practice. This scheme allows agencies and persons, especially small agencies and persons, to continue to form the network of providers needed to complete each individual intercountry adoption. The Department does not want to interfere unnecessarily with how a network is formed to provide services in each particular adoption case. The Department understands that agencies with an adoption program in one country must be able to connect with potentially 50+ other agencies or persons because the prospective adoptive parent(s) to be matched with a child could be in any one of the 50 States or in other U.S. jurisdictions. Conversely, prospective adoptive parent(s) who seek to adopt a particular child identified as in need of an adoptive placement must be able to connect with an agency or person (which may not be located in the State where the prospective adoptive parent(s) resides) that has an adoption program in the country of origin from which they wish to adopt a child. In deference to the historically important role the formation of networks and the use of small agencies and persons have played in providing services that match children from many different countries of origin with prospective adoptive parent(s) in diverse and widely dispersed geographical areas, the Department has crafted regulations that allow such relationships among agencies or persons to continue. The Department's goal is to mirror current practices and to provide regulatory flexibility so that the regulations do not

negatively affect small agencies and persons and other providers.

The regulations through the accreditation and approval standards do require, however, an accredited agency, temporarily accredited agency, or approved person in every case be identified as the primary provider and formally assume responsibility for supervision of other providers in the case, both in the United States and overseas, that are not accredited or approved. Another important provision, in §§ 96.45(c) and 96.46(c), is that a primary provider must assume legal responsibility for the actions of supervised providers, both in the United States and overseas.

As stated, the Department is not seeking to alter current practice unnecessarily, particularly where current practice does not give rise to the types of abuses that the Convention and the IAA seek to curtail. In this case, however, while the concept of identifying a primary provider is not an established practice and is not provided for in the IAA, the Department has concluded that it is necessary to have an organizing principle to ensure that one agency or person has ultimate responsibility for proper and effective service provision. Close coordination is particularly important given the Convention's requirements that key tasks and determinations be undertaken and made before the adoption proceeds to ensure that the adoption is in the best interests of the individual child and in compliance with U.S. obligations to other Convention countries. The Department also believes that the primary provider requirement will improve practice without unduly changing the adoption community's current structure for providing adoption services. The Department also notes that, consistent with the IAA, the regulations provide for regulatory flexibility and enable all agencies or persons, including those that are small, to choose to become accredited, temporarily accredited, or approved (and act as a primary provider in a particular case where necessary) or to be supervised providers.

When acting as the primary provider and using supervised providers, the accredited agency, temporarily accredited agency, or approved person must comply with § 96.44 (Acting as Primary Provider), § 96.45 (Using Supervised Providers in the United States), and § 96.46 (Using Supervised Providers in Other Convention Countries) as well as all of the other standards in subpart F.

The primary provider may work with a variety of entities. In the United

States, the primary provider may work with: (1) Other U.S. accredited agencies, temporarily accredited agencies, and approved persons; (2) agencies and persons acting under its supervision and responsibility (U.S. supervised providers); (3) public bodies; and (4) exempted providers. In another Convention country, the primary provider may work with: (1) Agencies, persons, or other entities accredited by the other Convention country; (2) Convention country public authorities or competent authorities; and (3) agencies, persons, or other entities acting under the primary provider's supervision and responsibility ("foreign supervised providers"). As noted, the conditions on the use of these agencies, persons, or other entities, whether domestic or foreign, are listed in §§ 96.45 and 96.46.

(d) Supervised Providers. Agencies and persons that do not become accredited or approved may provide adoption services in the United States in cases subject to the Convention only under the supervision and responsibility of the accredited agency, temporarily accredited agency, or approved person that is acting as the primary provider in the case (unless they are a public body or are only performing an exempted service). These agencies or persons are called "supervised providers." Supervised providers are not required to be in substantial compliance with all of the accreditation and approval standards set forth in subpart F. However, these regulations do set forth requirements that apply when a primary provider uses a supervised provider to provide adoption services in a Convention case. Those requirements are set forth in §§ 96.45 and 96.46.

The following entities are not considered supervised providers: (1) Agencies or persons that are accredited, temporarily accredited, or approved in the United States; (2) public bodies; (3) agencies, persons, or entities accredited by other Convention countries; and (4) public authorities and competent authorities of other Convention countries. Such entities are not required to act as supervised providers; that is, they are not required to act under what in these regulations is referred to as the supervision and responsibility of the primary provider. Primary providers are not required to provide supervision and responsibility for them when they provide adoption services in a Convention case. Only non-accredited and non-approved entities that do not fall into one of these categories are considered supervised providers for the purpose of these regulations. While the

primary provider will have legal responsibility for the work of its supervised providers, it will not have legal responsibility for the work of other accredited/approved providers; public bodies; agencies, persons, or entities accredited by other Convention countries, and public authorities and competent authorities of other Convention countries, except to the extent that the primary provider must ensure that all six adoption services are provided.

(e) Activities That Do Not Require Accreditation, Approval, or Supervision. The IAA highlights four types of activities that, under specified circumstances, do not give rise to the requirement that an agency or person be accredited, temporarily accredited, or approved or operate under the supervision and responsibility of an accredited agency, temporarily accredited agency, or approved person. These activities are: (1) The completion of a home study or child background study; (2) the provision of child welfare services where the agency or person is not performing any other adoption service in the case; (3) the provision of legal services where the agency or person is not performing any adoption service in the case; or (4) activities undertaken by prospective adoptive parent(s) acting on their own behalf.

Home Study or Child Background Study. Even though it is listed as an adoption service in the IAA definition of adoption services, the performance of a home study or child background study, by itself, does not require the agency or person to be accredited, temporarily accredited, or approved or operate under the supervision and responsibility of the primary provider, where the agency or person is not performing any other adoption service (as defined) in the case. (Pub. L. 106–279, 3(3) and 201(b)(1)). The reader should note that this exception only applies where the agency or person is not also providing any other service listed as an adoption service in the case. (Pub. L. 106–279, 201(b)(1)). If the agency or person is performing another adoption service in addition to the home study or child background study, it must be accredited, temporarily accredited, or approved or it must perform the service under the supervision and responsibility of the primary provider. Agencies or persons that operate under the home study/child background study exemption are called "exempted providers." The home study or child background study, as well as any related reports or updates, from an exempted provider must be approved by an accredited agency or temporarily

accredited agency. This approval requirement is included to satisfy the requirements of Article 22(5) of the Convention and section 201(b)(1) of the IAA.

A number of practitioners suggested to Acton Burnell that the regulations should exempt agencies and persons (both individuals and for-profits) that perform both home studies and post-placement monitoring from the requirement to be accredited, temporarily accredited, or approved or operate under the supervision and responsibility of the primary provider. The Department does not read the IAA to permit such an expansion of the exemption. The language of section 201(b)(1) of the IAA on its face makes clear that providing another adoption service in addition to the home study or child background study triggers the requirement. Because post-placement monitoring (before the legal adoption takes place) is explicitly defined as an adoption service, those agencies and persons providing both the home study and post-placement monitoring must either be accredited, temporarily accredited, or approved, or operate under the supervision and responsibility of the primary provider.

Child Welfare Services and Legal Services. Child welfare services and legal services, in accordance with the IAA definitions, are not "adoption services." Therefore, they do not by themselves trigger the requirement that the agency or person be accredited, temporarily accredited, or approved or operate under the supervision and responsibility of the primary provider. The IAA specifically highlights that the provision of child welfare services and legal services does not trigger this requirement, so long as the agency or person is not also performing in the case a service listed as an adoption service.

If the agency or person is also providing an adoption service in the case, however, it must be accredited, temporarily accredited, approved, or supervised. Acton Burnell received some comments arguing that the provision of a home study and a child welfare service in the same case should not trigger this requirement. The Department nevertheless reads the IAA as not allowing the child welfare exemption to apply if any one of the adoption services, including the home study, in addition to a child welfare service, is provided. Thus, for example, if an agency provides post-adoption evaluations but does not provide the home study or any of the other six adoption services, it is not required to be accredited or supervised. In contrast, if an agency provides both the home

study and the post-adoption evaluations, it must be accredited or supervised because the home study is one of the six listed adoption services.

For clarity, the definitions section provides a non-exhaustive list of the types of services that would be considered "child welfare services" or "legal services." This list is simply illustrative, and meant to highlight those common child welfare and typical legal services provided in an adoption case and to provide reassurance that such services do not trigger the requirement that the agency or person be accredited, temporarily accredited, approved, or supervised. Since only the six services listed in the definition of adoption services trigger the requirement to become accredited, temporarily accredited, or approved, or to operate under the supervision and responsibility of an accredited, temporarily accredited, or approved provider, it is not necessary to have an exhaustive list of child welfare or legal services. If the service being provided is not one of the six listed in the definition of adoption services, the requirement is not triggered.

Regarding the provision of legal services, some of the preliminary public input noted that some States do not permit an individual to provide both legal services and adoption services in a case. These regulations as proposed are not intended to supplant or alter existing State law in this respect; therefore, an individual can only provide both adoption services and legal services in a case where not prohibited from doing so by the relevant State law. Similarly, some State authorities asked whether attorneys for public bodies must be approved persons. Under the proposed regulations, attorneys who are providing adoption services as part of their employment with public bodies are not required to be approved or to operate under the supervision and responsibility of a primary provider.

Prospective Adoptive Parent(s) Acting on Their Own Behalf. Prospective adoptive parent(s) may act on their own behalf without becoming approved or operating under the supervision of an accredited agency, temporarily accredited agency, or approved person, as long as acting on their own behalf is not prohibited by State law or the law of the other Convention country involved. More specifically, in a case where the child is immigrating to the United States, the conduct must be permissible under the laws of the State in which the prospective adoptive parent(s) reside and the laws of the Convention country from which the parent(s) seek to adopt. Conversely, in a

case where a child is emigrating from the United States, the conduct must be permissible under the laws of the State where the child resides and the laws of the Convention country in which the prospective adoptive parent(s) reside. Please note that this provision only provides an exemption from requirements related to accreditation and approval. The requirements for intercountry adoption procedures will address how prospective adoptive parent(s) acting on their own behalf must comply with the Convention, the provisions of the IAA, and other applicable laws when completing a Convention adoption.

(f) Public Bodies. Public bodies are not subject to the accreditation and approval requirements at all, and no provision is made in this regulation for them to seek accreditation voluntarily. Therefore, they are not required to be accredited or temporarily accredited or to operate under the supervision or responsibility of an accredited agency, temporarily accredited agency, or approved person to provide adoption services in Convention cases. This exemption for public bodies reflects the special status accorded public bodies by the Convention. The abuses that partially motivated creation of the Convention were attributed in part to malfeasance by private, non-accredited agencies and persons. Therefore, the Convention did not contemplate requiring public bodies to undergo the same evaluation and accreditation process. Also, the Department reads sections 3(14) and 201(a) of the IAA, which provide that persons to be accredited/approved shall not include an agency of government, as excluding public bodies from the accreditation and approval requirement.

Public bodies must, however, otherwise comply with the Convention, the IAA and other applicable law when providing services in Convention cases. As a non-accredited entity, a public body cannot provide supervision and responsibility for other entities providing services in a Convention case. The IAA and the regulations require that the entity providing supervision and responsibility be an accredited agency, temporarily accredited agency, or an approved person. Therefore, a public body must either provide all adoption services in a Convention case itself, or must use only other public bodies or agencies, competent authorities, or accredited, temporarily accredited, or approved entities to provide adoption services in a Convention case.

4. Subpart D—Application Procedures for Accreditation and Approval

Subpart D governs applications for full accreditation or approval. Full accreditation or approval refers to accreditation or approval granted when an agency or person is in substantial compliance with the comprehensive and detailed standards in subpart F. The IAA also permits small agencies to apply for temporary, as opposed to full, accreditation that will be for a period of one or two years after the Convention enters into force for the United States. Except as otherwise provided, the procedures in subpart D do not apply to applications for temporary accreditation. The rules on applications and the standards for temporary accreditation are in subpart N.

Subpart D contains special provisions for agencies and persons that seek to be accredited or approved by the time the Convention first enters into force for the United States. Such an agency or person must apply by what is called the "transitional application deadline" (TAD). The TAD will be published in the **Federal Register**. Since the Department expects there to be a bottleneck as agencies and persons apply for initial accreditation and approval, it established the TAD to manage the initial accreditation/approval phase and to ensure that all interested agencies and persons are on notice that they must apply by the TAD if they are seeking to become accredited or approved by the time the Convention enters into force for the United States. After the Department learns the number of agencies and persons that applied by the TAD, and has an estimate of how long it will take the accrediting entities to evaluate each applicant (including conducting site visits), it will announce a "deadline for initial accreditation or approval" (DIA). The DIA will be the date by which an agency or person must complete the accreditation or approval process so as to be accredited or approved when the Convention enters into force for the United States.

The regulations provide that the accrediting entity must use its best efforts to provide a reasonable opportunity for an agency or person that applied by the TAD to complete the process by the DIA. Only those agencies and persons that are accredited or approved by the DIA will be included on the Department's initial list of accredited agencies and approved persons sent to The Hague Conference Permanent Bureau. If an agency or person is not on this list once the Convention enters into force for the United States, it cannot provide

adoption services in Convention cases until it becomes accredited or approved, unless it acts under the supervision and responsibility of the primary provider in the case, or is a public body or exempted provider. If an agency or person does not comply with this requirement, it risks being subject to the civil and criminal penalties provided for in the IAA. If an agency or person is not seeking to be on this first list, it may submit an application for accreditation and approval at any time. Regardless of when an agency or person submits its application, a designated accrediting entity must evaluate the applicant in a timely fashion.

The regulations also cover how an agency or person selects a designated accrediting entity. The agency or person must apply to a designated accrediting entity with jurisdiction over its application. The Department, after evaluating potential accrediting entities, will designate selected accrediting entities and define their jurisdiction. An accrediting entity's jurisdiction may be limited by geography, type of applicant (agency or person), or other conditions determined by the Department.

The Department is aware that some agencies and persons have previously undergone voluntary accreditation. If the entity that granted such voluntary accreditation is eventually designated as an accrediting entity by the Department, any agency or person that has previously obtained voluntary accreditation from that entity may apply to that same entity for Convention accreditation under these regulations, but is not required to do so.² When an

applicant applies for accreditation or approval for the first time under these regulations, an applicant may apply to any accrediting entity with jurisdiction over its application. Subsequent applications for accreditation or approval are subject to different rules that are also described in subpart D.

5. Subpart E—Evaluation of Applicants for Accreditation and Approval

Subpart E governs how accrediting entities must evaluate applicants for full accreditation or approval. The Department recognizes that accrediting entities currently use a variety of methods for voluntary accreditation of all types of social service providers, including adoption service providers. However, the Department chose in these regulations to mandate specific requirements so as to ensure that the processes used to scrutinize agencies and persons for compliance are fair and can be uniformly applied to all agencies and persons.

For example, the regulations require accrediting entities to do the following: (1) Use at least two qualified evaluators to assess an agency or person; (2) review all documentation submitted; (3) verify the information submitted; and (4) conduct appropriate site visits. The regulations also describe how site visits must be conducted, and include a requirement that at least one evaluator participate in the site visit. Before making its final decision, the accrediting entity may, in its discretion, advise an agency or person of any deficiencies that could prevent accreditation or approval. The accrediting entity may defer a final decision to allow the agency or person to correct the deficiencies.

The regulations also discuss how the accrediting entity must protect the information and documents disclosed to it at any stage of the accreditation and approval process. Specifically, the regulations address the protection of information from unauthorized disclosure, proper use of the information received, maintenance of accurate records, and safeguards for protecting identifying information from unauthorized use and disclosure. The regulations also require that the accrediting entity's officers, employees, contractors, and evaluators who have access to an agency's or person's documents or information sign a non-disclosure agreement.

requests that commenters in favor of deeming identify any current, non-regulatory standards that are sufficiently similar to particular standards in subpart F of this proposed regulation to warrant an automatic finding of compliance on the "matching" standard.

(a) Substantial Compliance. Section 96.27(a) mandates substantial compliance, not absolute compliance, with the standards in subpart F. There was considerable disagreement in the adoption community about which of the standards in subpart F—if any—should be made absolute. Some advocated that all the standards should be subject to strict compliance; others advocated that particular standards, but not others, should be subject to strict compliance. The Department believes that the use of an accreditation system based on substantial compliance and the opportunity to improve, rather than a strict licensing scheme, to regulate the agencies and persons is more consistent with the regulatory approach contemplated by the IAA. Thus, after careful deliberation, the Department has decided to mandate substantial compliance with all of the standards.

There are three additional reasons for the decision to use substantial compliance as the standard. First, in the absence of consensus among the experts, it was impossible to delineate which individual requirements should always be mandatory. Second, a number of these standards address a wide range of ethical and sound social work practices, rather than just Convention or IAA requirements. One-time failures to comply with such social work practice standards, which inherently are evolving, though unfortunate, should not form the sole basis for the imposition of the severe types of adverse action such as cancellation of accreditation or approval. Third, the Department considers it essential to give sufficient discretion to accrediting entities, which will be selected based on their expertise, to decide when non-compliance warrants denial of accreditation or approval or adverse action.

The Department recognizes that adherence to certain key individual standards is critical to protecting children and families and comporting with the requirements of the Convention and the IAA. Therefore, the regulations require that the standards or elements of certain standards will be assigned points by the accrediting entity. The accrediting entities will develop a scoring or weighting system that determines how a calculation is completed to determine if an agency or person is in substantial compliance with the standards. The Department has considered but rejected the idea of defining the scoring methods and listing the weighting criteria in this proposed rule. Instead, the Department intends to oversee the designated accrediting entities so that they may arrive at a

² Throughout this Preamble and regulations, accreditation and approval refer to accreditation and approval under these regulations, not to any other system of accreditation. Acton Burnell received substantial comments in favor of a "deeming" mechanism, which would permit agencies that have already been voluntarily accredited under a different accreditation system to meet via "deeming" these new Federal regulatory standards when the standards are the same. The Department has decided not to permit deeming. The standards developed in subpart F differ substantially from the standards currently used by potential accreditors. The standards in this proposed regulation focus mainly on intercountry adoption practices and compliance with the Convention and IAA requirements rather than general corporate governance practices and quality assurance systems. These requirements are derived from newly enacted mandates, and currently used accreditation standards do not yet have this same focus. Therefore, the Department has concluded that its regulatory standards differ substantially from other standards and that the use of a "deeming" mechanism would have little practical utility and not ensure adequate compliance with the Convention and the IAA. In addition, deeming could give an advantage in the start-up phase to some providers over others. The Department welcomes public comment on this issue, especially from potential accreditors as well as agencies that have been voluntarily accredited. The Department

uniform and consistent method of assigning points and weighting different standards. The Department and the accrediting entities will consult on a point system and methods to weight the standards to ensure that certain standards are given greater weight than others as appropriate. The weighting of standards is typical of and consistent with current accreditation practice. The Department, however, did not think it was advisable to begin the process of having any accrediting entities ascribe points and weight the standards in subpart F when both the number and content of the standards may change subject to comments provided during the public comment period. Also, because the point system and the weighting criteria will be developed by the accrediting entities as internal procedures, the criteria will not be subject to the notice and comment rulemaking. Applicants will be advised of the system, however, when provided with application materials.

(b) *Consideration of Capacity or Actual Performance.* The Department anticipates that when evaluating an agency or person for initial accreditation or approval, the accrediting entity may not be able to evaluate actual compliance because the agency or person will not yet have had an opportunity to comply with the stated requirements. Therefore, the regulations permit the accrediting entity, when evaluating an initial application for accreditation or approval, to evaluate the capacity of the agency or person to achieve substantial compliance with the standards rather than the agency's or person's actual performance when evidence of actual performance is not yet available. Once the agency or person has been accredited or approved, however, the accrediting entity generally will, for the purposes of reapplication after adverse action, renewal, monitoring and enforcement, consider the agency's or person's actual performance when deciding whether it is in substantial compliance with the standards. In special, limited circumstances it may be necessary for the accrediting entity to continue to evaluate capacity, but in the absence of such special circumstances the accrediting entity will evaluate actual performance.

(c) *Use of IAA Standards.* Accrediting entities may use only the standards in subpart F. Accrediting entities may not impose standards that are not included in these regulations. Although the accrediting entity is limited to the standards in subpart F when determining whether to grant or maintain accreditation or approval,

there are three instances when other considerations may be taken into account. First, if an agency or person has been previously denied accreditation or approval under these regulations, has withdrawn its application in anticipation of denial, has had its temporary accreditation withdrawn, or is reapplying for accreditation or approval after certain adverse actions, the accrediting entity may take the circumstances of such actions into account when making its determination. The Department considers such past behavior relevant in accreditation or approval decisions. Second, if any agency or person that has an ownership or control interest in the applicant has been previously debarred, the accrediting entity may take the circumstances of the debarment into consideration when making its determination. The purpose of this provision is to prevent an agency or person that has been debarred from bypassing the debarment by merely reconstituting itself as another entity. Finally, a failure to provide information to the accrediting entity may be grounds for denial or other adverse action.

6. Subpart F—Standards for Convention Accreditation and Approval

(a) *Overview of Standards.* Subpart F contains the standards for accrediting and approving agencies and persons. The standards include the basic requirements necessary to comply with the IAA and the Convention, detailed standards addressing issues of particular concern to the adoption community, and generally recognized standards for sound and ethical practice in the intercountry adoption field.

The standards contained in subpart F are applicable at all stages of accreditation or approval. Specifically, the accrediting entity will use these standards: (1) When an agency or person applies for accreditation or approval; (2) during monitoring by the accrediting entity; (3) at the time renewal of accreditation or approval is sought; (4) during the investigation of complaints lodged against the agency or person; and (5) when the accrediting entity or the Department contemplates taking adverse action against the agency or person. If at any time an agency or person is believed to be out of substantial compliance with these standards, the client or other interested party may file a complaint. The accrediting entity will investigate the complaint in accordance with subpart J and, if non-compliance is established, take adverse action as appropriate in accordance with subpart K.

The standards in subpart F do not apply to agencies seeking temporary accreditation, except as otherwise provided in subpart N (Procedures and Standards Relating to Temporary Accreditation). Subpart N contains separate performance standards for small entities that wish to become temporarily accredited agencies under the IAA.

(b) *Review of Certain Specific Standards.* The Department does not believe it is necessary in this Preamble to review the contents of every standard in subpart F. However, there are a number of requirements that are specifically highlighted because the preliminary public input on such standards has been conflicting. For those standards, the Department believes that further explanation is warranted.

Section 96.33: Budget, Audit, Insurance, and Risk Assessment Requirements: The appropriate treatment of liability and insurance is one of the issues that elicited a range of intense comments during the development of the proposed regulation. Concerns centered in particular on the ability of an aggrieved party to seek redress from a single agency or person in the United States that would be responsible for the adoption. Input from congressional staff called for the regulations to assign civil liability to the accredited/approved provider for the acts of its U.S. supervised providers and its foreign supervised providers. To address these concerns, the regulations mandate in §§ 96.45(c), and § 96.46(c) that any accredited agency, temporarily accredited agency, or approved person acting as the primary provider assume legal responsibility vis-à-vis the adoptive parents for the acts of other agencies and persons in the United States or abroad acting under its supervision and responsibility, in addition to its own acts in connection with an adoption. The intent of this provision is to give the adoptive parents legal recourse against a single entity so far as is reasonable. The primary provider may, however, seek indemnification from its supervised providers for any liability it incurs vis-à-vis the adoptive parent. (No effort is made, however, to make the primary provider responsible for the acts of other accredited agencies or approved persons with which it handles an adoption.)

The Department recognizes that this provision may raise the costs of liability insurance for accredited agencies and approved persons and have an effect on civil litigation. The Department is satisfied, however, that it is consistent with the intent and overall purpose of

the IAA. As noted, the Department has concluded that there must be a single "primary provider" for each Convention adoption. Thus, under these regulations, if a supervised provider violates the standards, the primary provider's accreditation, temporary accreditation, or approval may be in jeopardy. It seems also appropriate that, in tort, contract, or similar legal action in which the performance of an adoption service provider is challenged, the primary provider should assume legal responsibility for the acts of the supervised providers (domestic and foreign) that it has chosen to work with. The Department believes that the primary provider will do a better job of supervising if it is deemed automatically to be legally responsible for the acts of its supervised providers in both the accreditation and approval context and with respect to tort, contract, and similar civil claims.

Through Acton Burnell and others, the Department has heard concerns that agencies and persons carry sufficient liability insurance to cover the risks of providing adoption services. The regulations require the agency or person to have a professional assessment of the risks it assumes, including the risk of assuming legal responsibility for its supervised providers in the United States and abroad, and to carry an amount of insurance that is reasonably related to that risk but in no event less than one million dollars per occurrence or claim. In addition, to protect against financial irregularities, the Chief Executive Officer, Chief Financial Officer, and all other officers and employees who have direct responsibility for financial transactions or financial management of the agency or person must be bonded.

The Department recognizes that these standards allocating legal risk, mandating insurance coverage, and setting the floor amount of one million dollars for insurance coverage are sensitive and will require changes in current practice. The Department welcomes public comment, including from insurance experts, actuaries, associations, and agencies and persons, on these issues. Agencies and persons may specifically wish to encourage their insurance providers to comment on these proposed regulations.

The Department also wishes to call special attention to the standard relating to cash reserves in § 96.33(e). A standard of a reserve of three months is proposed. Commenters may wish to address whether this period is too long or too short.

Section 96.35: Suitability of Agencies and Persons to Provide Adoption

Services Consistent with the Convention: An agency or person must demonstrate to the accrediting entity that it provides adoption services ethically and in accordance with the Convention's goals of ensuring that intercountry adoptions take place in the best interests of children and preventing the abduction, exploitation, sale of, or trafficking in children. To permit the accrediting entity to evaluate the suitability of an agency or person for accreditation or approval, the agency or person must disclose the specified information about itself and about its directors, officers, and employees. The Department believes that it is critical for the accrediting entity to have full information about the applicant before making a final decision. Because suitability is a matter of ongoing concern, the agency or person must also update the information required by this section within thirty business days of learning of a change in the information.

The standards do not require automatic disqualification of an agency or person for any particular behavior, activity, or event. Instead, consistent with the accreditation scheme employed, the standards give the accrediting entity the discretion and flexibility to examine the factual circumstances underlying the conduct and to determine whether accreditation or approval is appropriate. Where an agency or person has committed an egregious or illegal act, or has engaged in a pattern of behavior that is inconsistent with protecting the best interests of children, accreditation or approval is likely to be inappropriate. Yet it is impossible for the Department to list every type of non-conforming or unethical behavior that would fall into this category. Therefore, in addition to specific disclosures, the standards mandate disclosure of any other businesses or activities currently carried out by the agency or person, affiliate organizations, or any entity in which it has an ownership or control interest that are inconsistent with the principles of the Convention. These principles include the proposition that in no instance is the abduction, sale, exploitation, or trafficking of children permissible. Such activities would include, for example, distributing pornography or operating a Web site that contains pornography, regardless of whether such activity is legal or not, and trafficking in individuals, either into or out of the United States, for pernicious purposes.

Section 96.37: Education and Experience Requirements for Social Service Personnel: This section sets forth the required qualifications for

individuals performing adoption-related social service functions. The qualifications are divided into categories that correspond to the individual's function, role, and position. These standards substantially upgrade the requirements for social workers, both supervisors and non-supervisors, performing certain tasks by requiring them in many cases to have a master's degree from an accredited program of social work education or to meet other educational or work experience requirements. The required qualifications for individuals performing home studies or child background studies differ from those for individuals performing other social service functions. All individuals performing home studies or child background studies are subject to the requirements in § 96.37, unless they are exempt pursuant to § 96.13. The standards exceed the current qualifications required for home study preparers under the regulations for the INA (*see* 8 CFR 204.3(b) (home study preparer)). Specifically, the new rules as proposed require individuals performing home studies or child background studies to have a minimum of a master's degree in social work education.

Section 96.40: Fee Policies and Procedures: The standards in this section address fee practices. The preliminary public comment included complaints about the charging of large fees, last-minute fee changes that were not disclosed to clients in advance and practices that require prospective adoptive parent(s) to travel abroad with large amounts of cash to pay for adoption services to be rendered in the country of origin. In addition, frustrations were expressed with differences in the ways that fees are categorized, which makes it impossible for clients to compare fees for similar services.

The standards impose a number of requirements to address these concerns. In particular, they require prior disclosure of fees and provide guidelines for how and when fees may be charged. These standards help to ensure that agencies and persons disclose how fees are disbursed. There are also specific provisions governing when and how additional fees may be assessed beyond the original fee, and how unexpended fees must be refunded. The standards also require the agency or person to have a mechanism in place for transferring funds to other Convention countries whenever the financial institutions of that country so permit so that direct cash transactions by prospective adoptive parent(s) are

unnecessary. The Department is aware that many of the fees charged by public authorities in other Convention countries—for example, for passports, birth certificates, adoption certificates, or court documents—must be paid in currency. Therefore, these regulations strike a balance that takes into consideration the reliability and feasibility of using non-cash transactions in a particular Convention country, but requires agencies and persons to use available methods so that the need for direct cash transactions by prospective adoptive parent(s) is minimized.

Section 96.41: Procedures for Responding to Complaints and Improving Service Delivery: The Department recognizes that the handling of complaints against agencies and persons is one of the areas of greatest concern in the adoption community. To address this concern, the regulations provide for the Department to establish a Complaint Registry that may be funded in whole or in part by accreditation and approval fees or fees paid to the Department. The Complaint Registry's responsibilities and functions are described in subpart J of these regulations. In addition, the standards address requirements for the handling of complaints by agencies and persons. In particular, the standards require agencies and persons to have written complaint policies and procedures that are provided to clients at the time the adoption contract is signed. The procedures must permit any birth parent, prospective adoptive parent, or adoptee to lodge a complaint about services and activities that he or she believes are inconsistent with the Convention, the IAA, or the regulations implementing the IAA. The regulations also set forth time frames for responding to complaints. Some prospective adoptive parent(s) also indicated that fear of retaliation or other adverse action hampered their ability to make complaints about wrongful behavior. Thus, the regulations also explicitly prohibit retaliatory action or other conduct that would discourage clients from registering complaints.

Section 96.42: Retention, Preservation, and Disclosure of Adoption Records: This section addresses preservation of and access to adoption records. Adoption records are defined as the records held by agencies or persons or State public bodies and do not include records held by Federal government agencies. Records held by Federal government agencies are called Convention records, and will be addressed in a separate regulation to be published in part 98 of title 22 of the

CFR. The proposed rule for part 98 is also published in a separate rulemaking document in today's **Federal Register**.

The Department recognizes the wide range of views on access to records sealed in accordance with State law. Both the Senate and House committee reports on the IAA contain almost identical language stating that there was no intent to change current State law governing access to birth parent identifying information in adoption records. (See Report of the Senate Committee on Foreign Relations, S. Rep. No. 106–276 at 11 (2000); Report of the House Committee on International Relations, H.R. Rep. No. 106–691 at 30 (2000)). Moreover, section 401(c) of the IAA expressly states that access to adoption records that are not Convention records will be governed by applicable State law. Therefore, the standards in this section mirror the IAA's neutral position on access to adoption records and simply provide that agencies and persons follow applicable State law regarding access to identifying information.

On the issue of the preservation of adoption records, the Convention requires that a child's social and medical information be preserved, but it does not set a specific retention period. In response to the Convention's requirements, the regulations require that an agency or person preserve adoption records, including personal effects, for any period of time required by applicable State law. The Department seeks comment on the adoption records preservation standard. Commenters should address the issue of whether or not a uniform Federal time frame for the retention of adoption records should be included in the standards. Commenters should provide suggestions on what the adoption records preservation standard should be and provide information on the costs and burden of maintaining adoption records, including personal items, for a period of time that they believe would be appropriate.

Section 96.43: Case Tracking, Data Management, and Reporting: This section addresses the IAA's extensive reporting requirements. The Department is required to report to Congress all of the information contained in this section. Some of this information, as indicated, is required for both incoming and outgoing cases, and for both Convention and non-Convention cases. There also is a provision requiring agencies and persons to provide information directly to the Department about outgoing cases to non-Convention countries, even though those cases are not subject to the Convention.

Sections 96.45 and 96.46: Using Supervised Providers in the United States; Using Supervised Providers in Other Convention Countries: The standards in §§ 96.45 and 96.46 apply when a primary provider is using a supervised provider to provide services in a Convention case. As is noted earlier, such supervised providers are not required to be accredited or approved, and hence need not be in substantial compliance with all of the accreditation and approval standards set forth in subpart F. However, §§ 96.45 and 96.46 do set forth specific procedures and requirements that must be followed when a primary provider uses a supervised provider. Non-compliance by the supervised provider with these requirements may jeopardize the accreditation or approval status of the primary provider.

As is noted above, if public bodies, public authorities, competent authorities, or agencies, persons, or other entities accredited or approved by the United States or another Convention country are used to provide services, the primary provider is not required to comply with §§ 96.45 and 96.46 for those entities or individuals. The IAA does not require such supervision and primary providers cannot practically supervise these entities, especially those in another Convention country. For this reason, these regulations do not make the primary provider responsible for the acts of these entities for the purposes of accreditation or approval or legal responsibility to the client. This distinction is particularly important where the primary provider is required by the other Convention country to use its public authorities, competent authorities, or accredited bodies. Because the primary provider has no control over these entities, it is appropriate to exclude them from the supervision and responsibility rubric. Problems originating from public or competent authorities or from bodies accredited by the other Convention countries may, of course, be addressed by the Department, as U.S. Central Authority, with other Central Authorities as appropriate.

On the other hand, supervised providers, while not subject to all of the accreditation and approval standards listed in subpart F, nevertheless must provide adoption services in Convention cases in a manner that is consistent with the principles of the Convention, the IAA, and sound and ethical practice. The Department has heard significant concerns about the behavior of individuals and organizations used by adoption service providers to assist them in providing

services. The concerns were especially acute about service providers in other countries.

The Department shares these concerns but at the same time recognizes that the ability to work with providers in other countries to obtain services that must be rendered abroad is a critical and essential part of intercountry adoption practice. Moreover, many such providers do provide sound and ethical services. The Department does not wish to render it overly difficult to work with these providers, or unnecessarily to penalize those providers that are not the object of these complaints. Furthermore, the Department recognizes that there are limits to its ability to monitor and control the practice of entities abroad not governed by our laws.

To address these issues, the regulations set forth specific requirements governing the use of supervised providers in Convention cases. The primary provider may work with one or more other entities that will act under its supervision and responsibility; however, such work is conditioned on compliance with the requirements in § 96.45 (Using Supervised Providers in the United States) and § 96.46 (Using Supervised Providers in Other Convention Countries). This Preamble does not review all of the requirements contained in these sections, but generally the primary provider must: (1) Screen supervised providers to ensure that they have a general understanding of the Convention and do not engage in practices inconsistent with its principles and requirements; (2) before entering into an agreement for the provision of adoption services, obtain information about the supervised provider's history of practice and suitability to provide services consonant with the Convention; and (3) enter into a written agreement that binds the supervised provider to adhere to a range of specified performance standards.

The requirements on supervised providers are bifurcated into two sections—§ 96.45 and § 96.46—so that the standards for foreign supervised providers can be tailored to address specific concerns. This bifurcation is useful for three reasons. First, some of the requirements for domestic supervised providers simply are not apposite for service providers operating in other countries and had to be modified accordingly. Second, the requirements for foreign supervised providers include specific provisions for the types of services those entities are most likely to provide (for example, in cases of immigrating children, the provision of medical records). Third,

and most important, the requirements for foreign supervised providers reflect the heightened concern expressed by some members of the adoption community about problematic practices by foreign providers.

The primary provider is responsible for ensuring that the supervised providers with whom it chooses to work comply with these requirements. Failure to do so may be grounds for adverse action against the primary provider and may jeopardize its accreditation or approval status.

Sections 96.47 and 96.53: Preparation of Home Studies in Incoming Cases; Background Studies on the Child and Consents in Outgoing Cases: These sections address the home study and child background study requirements. The Department wishes to highlight that all U.S. home studies and child background studies that are not prepared in the first instance by an accredited agency or temporarily accredited agency must be reviewed and approved by an accredited agency or temporarily accredited agency. It is not sufficient for the home study or child background study to be reviewed and approved by an approved person. Home studies or child background studies done by an exempted provider or by an approved person must be reviewed and approved by an accredited agency or temporarily accredited agency.

The reason that it is not sufficient for an approved person to approve the home study or child background study is that Article 22(5) of the Convention requires the home study or child background study to be prepared in every case by or under the responsibility of the Central Authority, public authorities, or by an accredited body. The Department recognizes that the IAA only requires that a home study or child background study prepared by an exempted provider be approved by an accredited agency or temporarily accredited agency. However, the Convention requires that in every case the preparation of the home study or child background study be performed or supervised by an accredited agency. Therefore, the regulations require all home studies or child background studies to be prepared or approved by an accredited agency or temporarily accredited agency.

Section 96.49: Provision of Medical and Social Information in Incoming Cases: The Department recognizes that the provision of accurate medical records on the child is one of the most important issues facing birth parents, prospective adoptive parent(s) and adoptees and that current practice has often been unsatisfactory. The

Department in this standard tried to balance the need for more detailed and accurate medical information on a particular child against the difficulties inherent in obtaining such information in many foreign countries.

The Department considered the following issues: First, the Department is aware that in many, if not most, Convention countries, given current practices and the limited resources of the public authorities or competent authorities, it is extremely difficult for such authorities to obtain all information that may exist on a child prior to an adoption. Second, some members of the public pointed out that, under Article 16 of the Convention, responsibility for preparing the child background study, which must include the medical history of the child, including any special needs of the child, is with the Central Authority of the child's country of origin (or its accredited bodies), rather than with the receiving country. Third, the Department is aware that, because the health care provided to many children in public care has historically been inadequate, medical care may not have been provided to a particular child, or care may have been provided but the medical records simply may not have been created or may not provide the same types of information available in the United States. Fourth, the Department is concerned that any impractical standards in this area will negatively affect the adoption of children with medical problems or special needs because agencies and persons will be less likely to assume the risks of placing such children absent extensive information, which typically is difficult to obtain. On the other hand, the Department received input that agencies and persons: (1) Do not aggressively push the public authorities or competent authorities in the child's country of origin to produce what records they do have; or (2) withhold medical information that they do obtain.

Resolving all these issues in a way that would meet the concerns of the diverse members of the adoption community was not possible. The Department has thus written several compromises into the regulations. The regulations require that all available medical information be forwarded in a timely fashion. In particular, agencies and persons must make all reasonable efforts to provide all of the listed information and, if such information cannot be provided, document all efforts made to obtain the information and explain why it is not obtainable. The standards also require the provision of contact information for the physician in

the country of origin who provided the information. The standards also mandate that, when a summary of a medical record is sent, the agency or person must ask the public or competent authority or other entity that provided the summary to produce a copy of the original medical record on which the summary is based. Additionally, the standards set time requirements for the advance provision of medical information to prospective adoptive parent(s). In accordance with the IAA, the child's medical records must be provided at least two weeks before either the adoption or the date on which the prospective adoptive parent(s) commence travel to the country of origin for the adoption, whichever is earlier. Finally, to ensure that prospective adoptive parent(s) have adequate time to consider such records, the standards require the agency or person to give the prospective adoptive parent(s) at least one week—unless there are extenuating circumstances involving the child's best interests that require a more expedited decision—to consider the records before a referral can be withdrawn.

(c) Review of Standards Related to Performance of Central Authority Functions in Incoming and Outgoing Cases. There are a number of sections that include standards with which agencies and persons must comply when performing Central Authority functions in either incoming or outgoing cases. The standards for incoming cases are in §§ 96.47 through 96.52. The standards for outgoing cases are in §§ 96.53 through 96.55. These standards are intended to ensure that agencies and persons are evaluated on their performance of those Convention tasks for which they are responsible. The Department will not review in the Preamble the content of each of these sections but wishes to highlight that these sections do not necessarily require the agency or person to perform the stated function in every case. Some of these functions may not be required in a case because the function is being performed by a public body, public authority, or competent authority, because the function is not applicable in the other Convention country, or because the factual circumstances of the case make the function unnecessary. For the purpose of accreditation and approval, the agency or person must further demonstrate that, when such functions have been performed, performance has been in accordance with the standards.

7. Subpart G—Decisions on Applications for Accreditation and Approval

Subpart G addresses how the accrediting entity must make and communicate decisions about accreditation and approval. Most important, for agencies or persons who applied by the TAD and who were accredited or approved by the DIA, the accrediting entity must notify such agencies and persons in writing on a "uniform notification date" (UND) to be set by the Department. The regulations state that the accrediting entity is not to provide any information on the agency's or person's status to the public or to the agency or person in question until the UND.

The Department has adopted this special procedure to ensure that no particular agency or person in this initial accreditation and approval phase gains any advantage by being notified earlier than other applicants. The accrediting entity or entities, which will have a limited number of evaluators to review applications and documents and conduct site visits, will necessarily finish evaluating some agencies or persons early and other agencies or persons closer to the DIA. The Department seeks to prevent those first qualifying from prematurely seeking acceptance by other Convention countries or from soliciting clients by using positive accreditation or approval decisions before the others have had an opportunity to complete the process during this start-up phase. The UND is designed to create an equitable starting point for all agencies and persons that applied by the TAD.

This regulation on communication during the start-up phase does not prohibit an accrediting entity from communicating with agencies or persons that applied by the TAD about their status for the sole purpose of affording them an opportunity to correct deficiencies before the DIA. Likewise, the Department may obtain interim status information from the accrediting entity.

Similarly, the regulations deal with the problem that all the agencies and persons that were accredited or approved during this start-up phase could come due for renewal at the same time. To avoid an ever-repeating bottleneck, the regulation provides that the accrediting entity, in consultation with the Secretary, may accredit or approve some agencies and persons that applied by the TAD for a period of three, four, or five years for just the first accreditation or approval cycle. The Secretary must approve the criteria used

to assign accreditation or approval periods to such agencies or persons.

Also in subpart G, the Department selects a four-year accreditation or approval period. The IAA provides that the accreditation or approval period should not be less than three years and not more than five years. (Pub. L. 106–279, section 203(b)(3)). The Department weighed the costs and benefits of different periods and chose the period of four years. There was substantial public concern about the recurring fees accrediting entities would charge for each renewal cycle and the costs incurred internally when agencies and persons must make changes in staffing, training, and other operations to comply with the standards set by the regulations. There was also public concern that these costs would be passed along to prospective adoptive parent(s) and could make the cost of adoption services beyond the reach of many families. On the other hand, others in the public were eager to ensure that the compliance of agencies and persons was checked often. Therefore, the Department selected the four-year cycle to balance the desire to minimize costs while ensuring sufficiently frequent renewal evaluations, which will be more extensive than the routine monitoring required during the accreditation or approval period.

8. Subpart H—Renewal of Accreditation and Approval

Subpart H, which mainly regulates the accrediting entities, governs the renewal of accreditation or approval. To determine whether to renew accreditation or approval, the accrediting entity must evaluate the agency or person to determine if it is in substantial compliance with the standards in subpart F. Before making a renewal decision, the accrediting entity in its discretion may advise the agency or person of any deficiencies that may hinder or prevent its renewal and defer a decision to allow the agency or person to correct the deficiencies. The accrediting entity must process the renewal application in a timely fashion.

Agencies or persons in good standing may apply for renewal from a different accrediting entity than the one that handled its prior application. If an agency or person decides not to seek renewal, it must notify the accrediting entity and take the necessary steps to transfer its pending Convention adoption cases and adoption records appropriately.

9. Subpart I—Routine Oversight by Accrediting Entities

Subpart I covers routine oversight of accredited agencies and approved persons. The accrediting entity is expected to take a more assertive role than is typically the case in the current, purely voluntary accreditation process in monitoring accredited agencies and approved persons. For example, the accrediting entity must monitor the accredited agencies and approved persons at least annually to ensure that they may maintain their accreditation or approval. The accrediting entity must also investigate complaints in accordance with subpart J. As part of its oversight, the accrediting entity may conduct random site visits and consider any information that becomes available about the agency's or person's compliance.

10. Subpart J—Oversight Through Review of Complaints

Subpart J sets out extensive procedures for making complaints about accredited agencies or approved persons. Subpart J was added to the regulations specifically in response to requests from elements of the adoption community asking for more avenues to express complaints about unsatisfactory practices and to reduce the potential for litigation by giving parties a complaint resolution mechanism. The Department recognizes that the handling of complaints against agencies and persons is a major concern to some members of the adoption community. The Department has heard claims that State-licensing authorities and accrediting entities do not respond adequately to complaints about intercountry adoption practices and that current complaint processes are not sufficiently transparent. The Department has been urged to establish a mechanism through which the Department would itself, outside of the IAA-mandated accreditation and approval process, investigate complaints and penalize unacceptable conduct.

The IAA does not give the Department the authority to set up an entirely separate enforcement scheme with non-statutory remedies outside of the accreditation and approval process and use of adverse action and the IAA civil and criminal penalties. In particular, the IAA specifically developed a structure under which the Department for the most part would not directly regulate agencies or persons. Instead, it relies on private or State-based accrediting entities to regulate agencies and persons using the standards developed by the Department. Where those entities do not

act, the IAA provides for the Department to suspend or cancel accreditation or approval by acting directly. Furthermore, the IAA permits the Department temporarily or permanently to debar agencies or persons.

These enforcement devices, along with the adverse actions that may be imposed by the accrediting entity, are sufficient to enforce the standards without creating a duplicative process. In any event, the Department could not manage such additional proposed responsibilities given its primary mission as a foreign affairs agency responsible for the conduct of diplomatic and consular relations. Moreover, the funding for such a major, non-statutorily mandated role for the Department would be uncertain. The Department lacks the capacity to create and assume such a role in dispute resolution and imposition of remedies. The Department therefore believes that the enforcement scheme established in the IAA should be given a chance to work.

The Department does, however, take the community's request for a complaint process very seriously. Thus, the regulations adopt a suggestion that the Department establish a complaint service to receive, screen, and monitor action on complaints. Specifically, the regulations provide for the establishment of a Complaint Registry, which may be funded in whole or in part by fees collected by the accrediting entities or the Department. The Complaint Registry will record complaints that are not resolved through the internal processes of the service providers and ensure that they are brought to the attention of the accrediting entities or others as appropriate. The accrediting entity is obligated to report the outcome of complaints it receives to the Complaint Registry so that the Department can monitor whether and how the accrediting entity is addressing complaints. The Complaint Registry will also be charged with identifying any patterns of complaints and other egregious behavior and reporting them as appropriate for further action. The precise functions of the Complaint Registry will be detailed in an agreement between the Department and the Complaint Registry.

The regulations prescribe how the complaint process will work. Generally, complaining parties, other than Federal agencies, public bodies, law enforcement or licensing authorities, or foreign Central Authorities must first file their complaints with the agency or person providing adoption services and,

if the agency or person is a supervised provider, with the primary provider in the case. If the complaint is not resolved at this level, then the complaint may be filed with the Complaint Registry, which will screen and record the complaints and refer them, as appropriate, to the accrediting entity or other authorities. Federal agencies, public bodies, law enforcement or licensing authorities, or foreign Central Authorities may make complaints directly to the Complaint Registry or the accrediting entity. The accrediting entity must investigate the complaint and may conduct a site visit if necessary. If an accrediting entity determines that the agency or person is out of compliance, it must take adverse action pursuant to subpart K. When an accrediting entity has completed its investigation, it must provide written notification to the complainant, the Complaint Registry, and any other entity that referred the complaint and include information on the outcome and any actions taken. The accrediting entity must also establish written procedures to respond to complaints. Finally, the accrediting entity must refer certain types of substantiated complaints to the Secretary or appropriate law enforcement authorities. The regulations prescribe the standard for determining when to make such referrals.

The Department believes that one critical benefit of these complaint procedures will be to promote the resolution of complaints about adoption service providers in a way that will minimize, if not eliminate, the need for an accrediting entity or the Department to take adverse action, which may be challenged by an affected agency or person in Federal court. Thus, the procedures may also have the effect of reducing litigation.

11. Subpart K—Adverse Action by Accrediting Entities

Subpart K describes how and when an accrediting entity may impose an adverse action. To enforce the accreditation and approval standards in subpart F, the IAA gives both designated accrediting entities and the Department the power to impose adverse actions. An accrediting entity is authorized to take certain actions against agencies and persons. The Department has the authority to take some of the same adverse actions as an accrediting entity, along with the additional authority to temporarily or permanently debar an agency or person. The Department's enforcement authorities are addressed in subpart L.

An accrediting entity, whether it is a private, non-profit accrediting entity or

a State entity, may impose the following adverse actions: Suspend accreditation or approval; cancel accreditation or approval; refuse to renew accreditation or approval; require specific corrective action to improve deficiencies; or impose other sanctions. Under the IAA, these specific adverse actions are not subject to any type of administrative review (*i.e.*, they are not subject to review by the Department), and the regulations reinforce this point. The IAA does provide, however, that these specific adverse actions are subject to judicial review in a United States district court.

Denial of an agency's or person's initial request for accreditation or approval is not listed as an adverse action in the IAA. (Pub. L. 106–279, 202(3)). Clearly, however, there is the possibility that agencies and persons will be denied accreditation or approval. Thus, the regulations permit the accrediting entity to deny accreditation or approval and make clear that, because denial is not listed as an adverse action under section 202(3) of the IAA, it is subject to neither judicial review nor administrative review. This approach is consistent with the Department's understanding that the IAA distinguishes, intentionally, between agencies and persons actively providing Convention adoption services pursuant to accreditation or approval, on the one hand, and agencies and persons not so engaged. Adverse actions imposed on the former are, in effect, sanctions, whereas denial to the latter is not a sanction, but merely a decision that certain standards have not been met, leaving open the possibility that they will be met later. The former have interests in preserving their ability to continue their work, and the IAA protects these interests by providing judicial review of the enumerated adverse actions. The IAA does not similarly protect the interests of agencies and persons in the second category, *i.e.*, those not engaged in providing Convention adoption services pursuant to accreditation or approval. To permit agencies and persons judicial review of denial decisions would significantly add to the costs of accreditation and approval. Limiting access to judicial review to agencies and persons that have already been accredited or approved, and that have developed the resources to provide adoption services, will conserve the accrediting entity's limited resources. This limitation will enable the accrediting entity to focus on and monitor the performance of agencies and persons actually providing adoption

services on an ongoing basis rather than devoting its resources to defending in time-consuming litigation its decisions to deny accreditation or approval. This limitation will also reduce the number of cases in this new area of Federal regulation subject to the jurisdiction of the Federal courts. The regulations, however, do permit the agency or person to petition the accrediting entity for reconsideration of the denial, pursuant to the accrediting entity's internal review procedures.

Denial of a reapplication for accreditation or approval after cancellation or refusal to renew is treated the same as denial of an initial application. In both instances, the applicant will not be currently engaged in providing Convention adoption services pursuant to accreditation or approval, and thus will not have the kind of interest in providing continued services that the IAA protects by making judicial review available. In contrast, an accrediting entity may cancel or refuse to renew the accreditation or approval of an agency or person, but the agency or person in that case has an interest in providing continued services and, under the IAA, may seek judicial review of the cancellation or the refusal to renew. Alternatively, that agency or person, instead of seeking judicial review of the cancellation or refusal to renew, may choose to reapply for accreditation or approval. If the accrediting entity denies that reapplication for accreditation or approval, the denial is not subject to administrative or judicial review. Again, the regulations permit the agency or person to petition the accrediting entity for reconsideration of the denial, pursuant to the accrediting entity's internal review procedures.

In summary, all adverse actions (suspension, cancellation, refusal to renew, corrective action, or other sanction) are subject to judicial review, consistent with the fact that all affect an accredited agency or approved person with an interest in continuing the provision of Convention adoption services pursuant to previously granted accreditation or approval. Prior to seeking judicial review and consistent with the normal requirements for judicial review under the APA, the regulations require agencies and persons to exhaust non-judicial remedies before the accrediting entity. Specifically, the agency or person must petition the accrediting entity to terminate the adverse action on the grounds that the deficiencies necessitating the adverse action have been corrected. If the deficiencies that led to the adverse action have been corrected, the accrediting entity may terminate the

adverse action. It is only when the accrediting entity does not terminate the adverse action that the agency or person may seek judicial review.

If an agency or person challenges cancellation of or refusal to renew its accreditation or approval in Federal court, its only remedy if the court denies its petition is to reapply to an accrediting entity for accreditation or approval. Permission to reapply, however, is not automatic. The accrediting entity may grant such permission only if the agency or person demonstrates that the specific deficiencies that led to the cancellation or refusal to renew have been corrected. Any denial of these re-applications, as noted previously, is not subject to judicial review.

If an agency or person is challenging the imposition of a suspension, corrective action, or other sanction by an accrediting entity in Federal court, it has no avenue for reversing such action other than review by a United States district court, which must review any challenged adverse actions in accordance with the APA, 5 U.S.C. 706. For purposes of judicial review, the accrediting entity will be treated as a Federal agency as defined in 5 U.S.C. 701.

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

The Department may impose the following adverse actions: suspension, cancellation, or temporary or permanent debarment. Under the IAA, these specific adverse actions are not subject to any type of administrative review by the Department or otherwise, and the regulations reinforce this point. Under the IAA, these final adverse actions are subject to judicial review in a United States district court.

The IAA administrative enforcement scheme provides, in section 204(b)(1) of the IAA, that the Department may suspend or cancel accreditation or approval when the accrediting entity has failed or refused to act. The IAA does not give the Secretary a role in reviewing or changing the adverse action decisions or denial actions actually imposed by the accrediting entity. The Department must, however, suspend or cancel the accreditation or approval granted by the accrediting entity when the Department finds that agency or person is substantially out of compliance with the standards in subpart F and the accrediting entity has failed or refused, after consultation with the Department, to take action. (Pub. L. 106–279, section 204(b)(1)).

In addition to this IAA statutory requirement, the Department has included in the proposed regulation another basis for suspension or cancellation by the Department. The Department may suspend or cancel accreditation or approval when such action will further U.S. foreign policy or national security interests, protect the ability of U.S. citizens to adopt children under the Convention, or protect the interests of children. The Department believes that this additional basis for suspending or canceling a particular agency's or person's accreditation or approval is a natural corollary of the Department's foreign affairs authority and is consistent with the IAA because it will enable the Department in specific situations to meet two of the stated IAA goals, which are:

[T]o protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such adoptions are in the children's best interests; and

[T]o improve the ability of the Federal Government to assist United States citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (Pub. L. 106-279, 2(b)(2) and 2(b)(3)).

This authority could be used, for example, if the practices of a particular accredited agency were to cause a Convention country to undertake action that could adversely affect the ability of United States citizens generally to adopt children from the country in question.

To obtain relief from the Department's suspension or cancellation, an agency or person must demonstrate to the Secretary that the deficiencies or circumstances that led to the adverse action have been corrected or are no longer applicable. In the case of suspension, the Department may terminate the suspension. In the case of cancellation, the Department may give the agency or person permission to reapply to the accrediting entity for accreditation or approval.

The Department, at its discretion, may also temporarily or permanently debar an agency or person on the Department's own initiative, at the request of DHS, or at the request of an accrediting entity. The standard for debarment is drawn directly from section 204(c) of the IAA and requires that there be substantial evidence that the agency or person is out of compliance and that 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.

In the case of temporary debarment, the Department's order, as required by the IAA, may not be for less than three years. The order must state the time frame for the temporary debarment and list the date on which the agency or person may petition the Department for withdrawal of the temporary debarment. If the Department withdraws the temporary debarment, the agency or person may then apply for accreditation or approval to an accrediting entity. In the case of permanent debarment, the agency or person is not permitted to petition the Department for withdrawal and may not apply for accreditation or approval again.

As provided in the IAA, a United States district court may review any challenged final adverse action of the Secretary in accordance with the APA, 5 U.S.C. 706.

13. Subpart M—Dissemination and Reporting of Information by Accrediting Entities

Subpart M requires the accrediting entity to make information about accredited agencies and approved persons publicly available. The provisions of subpart M on public disclosure of information will take effect only after the Convention enters into force for the United States. Specifically, the accrediting entity must disclose the name, address, and contact information for each accredited agency or approved person, and the names of agencies and persons denied accreditation or approval. It must also provide the names of those who have been subject to withdrawal of temporary accreditation, suspension, cancellation, refusal to renew, or debarment.

The accrediting entity must also make certain other information available to the public upon specific request. This includes confirming whether an agency or person has a pending application and the status of that application. It also includes indicating whether an agency or person has been subject to withdrawal of temporary accreditation, suspension, cancellation, refusal to renew, or debarment and providing a brief statement of the reasons for the action. Most important, the accrediting entity must make available a summary of the accreditation or approval study for each accredited agency or approved person in a format to be approved by the Department.

The accrediting entity must also maintain and disseminate certain information about complaints. In particular, when a complaint is filed,

the accrediting entity must maintain a written record of it and must verify certain information about the complaint upon request. The accrediting entity must have procedures for disclosing information about complaints that are substantiated and not substantiated.

The Department is placing these additional burdens on the accrediting entity in response to suggestions that such information should be made accessible so that parents can compare the performance of agencies and persons. The Department realizes that requiring the accrediting entity to perform this additional task will add to the costs of accreditation and approval and that these costs will ultimately be passed on to parents. There will be a substantial benefit, however, to parents in having available information that allows them to make informed decisions when selecting a service provider. The publication and dissemination of this information will also give agencies and persons another incentive to meet the standards set in subpart F.

The Department also intends to convene a working group that will include the accrediting entity(s) and other Federal government bodies, including DHS. The working group will meet on a regular basis to facilitate the exchange of information about the accreditation and approval process and to discuss how the agencies and persons are complying with these regulations.

14. Subpart N—Procedures and Standards Relating to Temporary Accreditation

The IAA permits the temporary accreditation of small agencies for a one- or two-year period starting on the date that the Convention enters into force for the United States. Agencies, but not persons, may apply to become temporarily accredited. The regulations in subpart N apply only to temporary accreditation.

To be eligible for temporary accreditation, an agency must show that it has provided adoption services in fewer than 100 intercountry adoption cases in the calendar year preceding the year in which the TAD falls (see subpart D for an explanation of the "transitional application deadline"). An agency may be eligible for a one- or two-year period of accreditation, depending upon the number of intercountry adoptions the agency has handled. An agency that has provided adoption services in 50-99 intercountry adoptions in the calendar year preceding the year in which the TAD falls may apply for a one-year period of temporary accreditation. An agency that has provided adoption services in fewer than 50 intercountry

adoptions in the calendar year preceding the year in which the TAD falls may apply for a two-year period of temporary accreditation. Both the one- and the two-year periods commence on the date that the Convention enters into force for the United States.

To become temporarily accredited, an agency must demonstrate that: (1) It is a non-profit agency licensed by State law to provide adoption services in at least one State; (2) it is, and, for the last three years prior to the TAD has been providing intercountry adoption services; (3) it has the capacity to comply with the Department's and the accrediting entity's reporting requirements; and (4) it has not been involved in any improper conduct related to providing intercountry adoption services. To prove that it has not been involved in any prior improper conduct, the agency must provide evidence that it has continually maintained its State license without suspension or cancellation for misconduct and it has not been subject to any fault or liability decisions or criminal findings of fraud or financial misconduct for the three years preceding the TAD. The agency also must demonstrate that it has a comprehensive and realistic plan for achieving full accreditation and is actively taking steps to execute that plan.

To maintain temporary accreditation, the agency must: (1) Follow all applicable licensing and regulatory requirements; (2) refrain from any improper conduct, including but not limited to, maintaining its State license; (3) avoid any findings of fault or liability in any administrative or judicial action; (4) ensure that it is not subject to any criminal findings of fraud or financial misconduct; (5) adhere to the prohibition against child-buying in § 96.36; (6) respond to complaints in accordance with § 96.41; (7) comply with the maintenance of records requirements in § 96.42; (8) provide data in accordance with § 96.43; (9) comply with the home study, child background study, and consents requirements in §§ 96.47 and 96.53; and (10) plan for the transfer of its cases when necessary. Furthermore, when acting as the primary provider using supervised providers, the agency must comply with the requirements on primary providers in §§ 96.44, 96.45, and 96.46. When performing Convention functions in either incoming or outgoing cases, it must adhere to the standards in §§ 96.52 (incoming cases) and 96.55 (outgoing cases). These standards and others are listed in § 96.104.

These standards for obtaining or maintaining temporary accreditation (subpart N) are much less comprehensive than the standards for full accreditation (Subpart F). The reason for this difference is that the IAA mandates that small agencies, which initially might be unable to meet the more detailed standards applicable to full accreditation, be allowed to provide services during an initial phase-in period for Convention implementation while developing the resources to comply with the accreditation standards. The temporary accreditation provisions are designed to avoid prematurely disqualifying small, community-based agencies from providing Convention adoption services. These regulations take into account the concern that, if too many small, non-profit agencies were unable to meet the standards and consequently stopped providing adoption services, then parents and children in some geographical areas of the United States would find it difficult to obtain services. On the other hand, the Department also considered the goal of ensuring that temporarily accredited agencies could provide satisfactory adoption services to families served. Thus, the Department struck a balance between these competing concerns and developed a list of performance-based standards applicable to temporarily accredited agencies, but also incorporated by reference certain key standards from the accreditation provisions in subpart F.

Moreover, some of the accrediting entity's procedures for evaluating an agency for temporary accreditation differ from the procedures for evaluating an agency for full accreditation. For example, an accrediting entity must conduct a site visit before granting full accreditation; however, for temporary accreditation, an accrediting entity may, in its discretion, conduct a site visit if necessary. The costs for site visits for full accreditation will be wrapped into the initial accreditation fee disclosed to the agency. Only if the accrediting entity decides to conduct a site visit for temporary accreditation, however, will it then assess the agency additional fees for the site visit costs. Also, the accrediting entity must monitor the agency's progress in implementing the plan for full accreditation and require the agency to make continual progress toward completing the process of obtaining full accreditation. These are just a few examples of the special procedures applicable to temporary accreditation. The reader is encouraged to consult subpart N for a detailed listing.

Finally, an accrediting entity may deny temporary accreditation, or withdraw temporary accreditation after it is granted, when the agency is not in substantial compliance with the applicable standards. Under the regulations, there is no administrative or judicial review of an accrediting entity's decision to deny temporary accreditation. This is consistent with the fact that the IAA does not treat denial as an adverse action. The Department believes, however, that withdrawal of temporary accreditation is an adverse action subject to judicial review under the IAA. Withdrawal of temporary accreditation is similar to cancellation and other adverse actions that are subject to judicial review in that an agency or person that was already permitted to provide adoption services under the Convention will lose the ability to provide such services. An agency whose temporary accreditation has been withdrawn may continue to seek full accreditation or may withdraw its pending application and apply for full accreditation at a later time. The circumstances of the withdrawal of its temporary accreditation may be taken into account when evaluating the agency for full accreditation.

VI. Regulatory Review

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

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies, pursuant to 5 U.S.C. 605(b), that the rule will not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis is required to “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). “Small entities” include “small organizations,” which the RFA defines as any non-profit enterprise that is independently owned and operated and not dominant in its field. (5 U.S.C. 601(4), 601(6)).

This proposed rule directly affects all adoption service providers, whether agencies or persons, who are providing intercountry adoption services in cases involving other Convention countries. The estimate of the number of such entities, which are mainly non-profits, is between 410 and 600. The Department estimates that the vast majority of these adoption service providers are small entities under the RFA; therefore, the Department has determined that this proposed rule will

have an impact on a substantial number of small entities.

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

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

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

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

B. The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

C. The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4; 109 Stat. 48; 2 U.S.C. 1532, generally requires agencies to prepare a statement, including cost-benefit and other analyses, before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector.

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

D. Executive Order 13132: Federalism

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

E. Executive Order 12866: Regulatory Review

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

After reviewing the proposed rule under the criteria listed in section 3(f) of the Executive Order, the Department has determined that the regulations will not have a cumulative annual effect of \$100 million or more on the economy. They will not create a serious inconsistency or otherwise interfere with any action taken or planned by another agency, because no other Federal agency has overlapping authority with respect to the subject matter of the regulation. They will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, because they have no implications for recipients of such Federal funding. Also, the Department believes that the regulations do not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Accordingly, the proposed rules are not a "significant regulatory action" within the meaning of the Executive Order 12866. The Department recognizes, however, that these regulations do address matters of considerable public interest. Therefore, although the Department does not consider this rule to be a "significant regulatory action," the Department consulted with DHS, HHS, and the SBA during the formulation of the rule. The rule was sent for review to OMB and SBA.

F. Executive Order 12988: Civil Justice Reform

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

G. The Paperwork Reduction Act of 1995

As noted above in the Preamble (Part IV, Section F), the Department has determined that § 96.91 and § 96.92 of subpart M, which cover dissemination of information about agencies and persons to the general public, constitute the type of "third-party disclosures to the general public" that are "information collections" covered by the PRA. The Department has concluded that these sections are not covered by the IAA exemptions to the PRA. Accordingly, the Department will submit an information collection request to OMB for review and clearance in conjunction with this notice of proposed rulemaking, as

required by 44 U.S.C. 3507(d) and 5 CFR 1320.11.

Section 96.91—Dissemination of Information to the Public about Accreditation and Approval Status—requires the accrediting entity to disseminate information on an agency's or person's accreditation/approval status. Section 96.92—Dissemination of Information to the Public About Complaints Against Accredited Agencies and Approved Persons—requires the accrediting entity to disseminate information on complaints about agencies and persons. The requirements of these sections specifically include:

- Requiring an accrediting entity to make available the names of agencies and persons that have been granted or denied accreditation or approval and those that have been subject to enforcement actions by the accrediting entity or the Department.
- Requiring an accrediting entity to provide information about agencies and persons that have pending applications for accreditation or approval.
- Requiring an accrediting entity to provide a summary of the accreditation/approval study on the agency or person.
- Requiring an accrediting entity to identify those agencies or persons that have been the subject of an enforcement action and provide a brief statement of the reasons for the action.
- Requiring an accrediting entity to verify information about the status of complaints received against accredited agencies or approved persons and identify whether the complaint was substantiated or not.

These proposed rules are intended to improve significantly the amount and type of information on adoption agencies and persons available to prospective adoptive parent(s) when they are in the process of selecting an adoption service provider. They are neither required nor expressly authorized by the IAA, but the Department believes that they are in furtherance of the oversight and enforcement functions of accrediting entities provided for in IAA subsections 202(b)(2) and (3). Accrediting entities may provide the information in any format, including using a Web site to publish such information about accredited agencies or approved persons.

The Department is seeking a three-year approval for these collections. The Department requests written comments and suggestions from the public and

affected accrediting entities concerning this proposed collection of information. Comments are being solicited to permit the Department to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected;
- (4) Minimize the burden of the collection of the information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Overview of this information collection:

Type of Information Collection: New.
Title: Accrediting Entity

Dissemination of Information About Accredited Agencies and Approved Persons to the Public.

Affected Public & Abstract:
Designated Accrediting Entities (non-profit institutions or State public bodies).

The IAA requires that the Department designate accrediting entities to accredit agencies or approve persons to provide adoption services for intercountry adoptions covered under the Convention. This information collection requires any such designated accrediting entities to disseminate information to prospective adoptive parent(s) and the public on the accreditation/approval status of agencies and persons. This information collection requires accrediting entities to disclose to prospective adoptive parent(s) and the public information on complaints filed against accredited agencies and approved persons. This third-party disclosure requirement is in furtherance of section 202(b) of the IAA, which charges accrediting entities with responsibility for oversight and review of complaints against accredited agencies and approved persons.

An Estimate of the Number of Respondents and the Amount of Time Required to Comply: The number of accrediting entities to be designated by the Department after publication of the final rule is unknown. The Department estimates that the number of designated accrediting entities is likely to be less than 10, but may constitute all or a substantial majority of the relevant accrediting industry. (See 5 CFR 1320.3(c)(4)(ii)).

Burden and an Estimate of the Total of Public Burden (in hours) Per Year Associated with the Collection: 60

minutes multiplied by 365 days; approximately 365 burden hours per accrediting entity; for an estimated annualized total of 3,285 hours.

We request and welcome comments on the accuracy of the estimates. Comments on the collection of information should be sent to OMB, Attn: Desk Officer for the Department of State, Office of Information and Regulatory Affairs, Room 10202, New Executive Office Building, Washington, DC 20503 who may be reached on 202-395-3897; also send copies to Department of State at the address provided for in the Addresses section of this preamble. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this proposed rule. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this proposed rule.

H. The Treasury and General Government Appropriations Act of 1999—Assessment of Federal Regulations and Policies on Families

In light of the subject matter of these proposed regulations, and section 654 of the Treasury and General Government Appropriations Act of 1999, Public Law 105-277, 112 Stat. 2681 (1998), the Department has assessed the impact of these proposed regulations on family well-being in accordance with section 654(c) of that act. This rule implements the Convention and the IAA requirements related to the accreditation and approval of adoption service providers who provide adoption services to families involved in an intercountry adoption. This proposed rule will promote child safety, child and family well-being, and stability for children in need of a permanent family placement through intercountry adoption. The rule will help to ensure that adoption service providers are taking appropriate steps to protect children and to strengthen and support families involved in the intercountry adoption process.

List of Subjects in 22 CFR Part 96

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

Accordingly, the Department proposes to add new part 96 to title 22 of the CFR, chapter I, subchapter J to read as follows:

PART 96—ACCREDITATION OF AGENCIES AND APPROVAL OF PERSONS UNDER THE INTERCOUNTRY ADOPTION ACT OF 2000 (IAA)

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Sec.

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

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

- 96.4 Designation of accrediting entities by the Secretary.
- 96.5 Requirement that accrediting entity be a non-profit 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]

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- 96.16 Effective date of accreditation and approval requirements.
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Standards for Cases in Which a Child is Emigrating From the United States

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 96.111 Fees charged for temporary accreditation.

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.

Subpart A—General Provisions

§ 96.1 Purpose.

This part provides for the accreditation and approval of adoption service providers pursuant to the Intercountry Adoption Act of 2000 (Pub. L. 106–279, 42 U.S.C. 14901–14954). Subpart B of this part provides for the

procedures for the selection and designation of accrediting entities to perform the accreditation and approval functions. Subparts C through H establish the general procedures and standards for accreditation and approval of adoption service providers (including renewal of accreditation or approval). Subparts I through M address the oversight of accredited or approved adoption service providers. Subpart N establishes special rules relating to small adoption service providers that wish to seek temporary accreditation.

§ 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 cases subject to the Convention. It does not include a temporarily accredited agency.

Accrediting entity means an entity designated by the Secretary to accredit agencies (including temporarily accredit) and/or to approve persons for purposes of providing adoption services in the United States in cases subject to the Convention.

Adoption means the formal act that establishes the legal parent-child relationship between a minor and an adult who is not already the minor's legal parent, so that as a result of the formal act the adoptive parent is the adoptive child's legal parent for all purposes and the legal parent-child relationship between the adoptive child and any former parent(s) is terminated.

Adoption record means any record, information, or item related to a specific Convention adoption of a child received or maintained by an agency, person, or public body, including, but not limited to, photographs, videos, correspondence, personal effects, medical and social information, and any other information about the child. An adoption record does not include a record generated by an agency, person, or a public body to comply with the requirement to file information with the Case Registry on adoptions not subject to the Convention pursuant to section 303(d) of the IAA (Pub. L. 106–279, 303(d), 42 U.S.C. 14932(d)).

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, non-profit 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 a child's prospective adoptive parent(s) that has been:

(1) Completed by an accredited agency or temporarily accredited agency; or

(2) A home study that has been completed by an approved person or exempted provider and approved by an accredited agency or a temporarily 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 cases subject to the Convention.

Best interests of the child shall have the meaning given to it by the law of the State with jurisdiction to decide whether a particular adoption or adoption-related action is in a child's best interests.

Case Registry means the tracking system jointly established by the Secretary and DHS to comply with section 102(e) of the IAA (Pub. L. 106-279, section 102(e), 42 U.S.C 14912).

Central Authority means the entity designated as such under Article 6(1) of the Convention by any Convention country (in the case of the United States, the United States Department of State).

Central Authority function means any duty required under the Convention to be carried out, directly or indirectly, by a Central Authority.

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, recruiting and identifying adoptive parent(s) in cases of disruption (but not assuming custody of the child),

arranging or providing temporary foster care for a child in connection with a Convention adoption, or providing educational, social, cultural, medical, psychological assessment, mental health, or other health-related services for a child or family in a Convention 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 entity established by the Secretary pursuant to § 96.70 as responsible for receiving complaints about accredited agencies, temporarily accredited agencies, and approved persons and performing such other services as the Secretary may determine.

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 another 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 another Convention country when, in connection with the adoption, the child has moved or will move from one Convention country to another Convention country.

Convention country means a country that has become a party to the Convention and with which the Convention has come into force for the United States.

Country of origin means the country in which a child is 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.

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

Disruption means the interruption of a placement for adoption before the adoption has become final.

Dissolution means the termination of an adoption after it has become final.

Exempted provider means a social work professional or organization that performs a home study on prospective adoptive parent(s) or a child background

study in connection with a Convention adoption (including any reports or updates), but that does not provide 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).

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

Legal services means services, other than those defined as "adoption services" in this section, 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, temporarily accredited agencies, approved persons, or prospective adoptive parent(s) on how to comply with the Convention, the IAA, and the regulations implementing the IAA.

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 bodies or public authorities.

Primary provider means the accredited agency, temporarily 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 authority means an authority operated by a national or subnational government of a Convention country.

Public body means a body operated by a State, local, or tribal government within the United States.

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, or any regulations implementing the IAA, pursuant to a delegation of authority.

State means the fifty 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 an agency, person, or other non-governmental entity, including a foreign entity, that is providing one or more adoption services

in a Convention case under the supervision and responsibility of the accredited agency, temporarily accredited agency, or approved person that is acting as the primary provider in the case.

Temporarily accredited agency means an agency that has been accredited on a temporary basis by an accrediting entity, in accordance with the standards in subpart N of this part, to provide adoption services in the United States in cases subject to the Convention. It does not include an accredited agency.

§ 96.3 [Reserved]

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

§ 96.4 Designation of accrediting entities by the Secretary.

(a) The Secretary will solicit applications from eligible private non-profit and public entities for designation as an accrediting entity through a request for statements of interest that will be publicly announced. Announcements soliciting statements of interest will be published on the Department of State's Web site, at <http://www.state.gov>. The Secretary will designate one or more entities that meet the criteria set forth in § 96.5 to perform the accreditation (including temporary accreditation) and/or approval functions. Each accredited entity's designation will be set forth in an Agreement between the Secretary and the accrediting entity that will govern the entity's operations. The Agreement will be published in the **Federal Register**.

(b) The Secretary's designation may authorize an accrediting entity to accredit (including temporarily 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 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 non-profit 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, 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 is responsible for licensing adoption agencies in a State and 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 selected by the Secretary;

(c) That it can monitor the performance of agencies it has accredited and persons it has approved to ensure their continued compliance with the Convention, the IAA, and the regulations implementing the IAA;

(d) That it has the capacity to take appropriate adverse actions against agencies it has accredited and persons it has approved and appropriate enforcement action against agencies to which it has granted temporary accreditation;

(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, temporary accreditation, and approval functions fairly and impartially; and

(h) That it can comply with any conflict-of-interest prohibitions set by the Secretary in the request for statements of interest.

§ 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 and/or temporary accreditation;

(2) Determining whether persons are eligible for approval;

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

(4) Investigating and responding to complaints about accredited agencies, temporarily accredited agencies, and approved persons;

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

(6) Determining whether the accredited agencies and approved persons that it oversees are eligible for renewal of their accreditation or approval on a cyclical basis consistent with § 96.60;

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

(8) Assisting as required by the Secretary in transferring adoption cases and adoption records of agencies or persons that cease to provide or are no longer permitted to provide adoption services in Convention cases.

(b) The Secretary may require an accrediting entity:

(1) To enter into an agreement with the Complaint Registry for services in screening complaints and performing other services relevant to the accrediting entity's functions; and

(2) Pursuant to such agreement, to remit to the Complaint Registry a portion of the accrediting entity's fees collected under its approved schedule of fees, to cover the costs of such services. Any such agreement between the accrediting entity and the Complaint Registry and the portion of accreditation/approval fees to be remitted to the Complaint Registry shall be subject to the approval of the Secretary.

(c) An accrediting entity must perform these responsibilities in accordance with the Convention, the IAA, the regulations implementing the IAA, 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 Convention cases of the agencies and persons it expects to serve;

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

(b) The schedule of fees must: (1) Establish separate non-refundable fees for Convention accreditation and Convention approval;

(2) Include in each fee for full Convention accreditation or approval the costs of all activities associated with the accreditation or approval cycle, including but not limited to, costs for completing the accreditation or approval process, complaint review and investigation, 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; and

(3) If the accrediting entity provides temporary accreditation services, include fees as required by § 96.111 for agencies seeking temporary accreditation under subpart N of this part.

(c) 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.

(d) 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 Department of State 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 accreditation, temporary accreditation, and approval services may be recovered through the collection of fees from those seeking accreditation,

temporary 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, temporarily accredited agencies, approved persons, and 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 regulations implementing the IAA, 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) 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 or a temporarily accredited agency is substantially out of compliance with the standards in § 96.104;

(2) Accrediting or approving significant numbers of agencies or persons 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 or documents that it receives in the course of performing its responsibilities; and

(7) Failing frequently and carefully to monitor the compliance of accredited agencies, temporarily accredited agencies, and approved persons with the home study requirements of the Convention, section 203(b)(1)(A)(ii) of the IAA (Pub. L. 106–279, 42 U.S.C.

14923(b)(1)(A)(ii)), and § 96.47 of these regulations.

(c) 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 (Pub. L. 106–279, 42 U.S.C. 14924(d)).

§ 96.11 [Reserved]

Subpart C—Accreditation and Approval Requirements for the Provision of Adoption Services

§ 96.12 Authorized adoption service providers.

Once the Convention has entered into force for the United States, an agency or person may not offer, provide, or facilitate the provision of any adoption service in the United States in connection with a Convention adoption unless it is:

(a) An accredited agency, a temporarily accredited agency, or an approved person;

(b) A supervised provider;

(c) An exempted provider; or

(d) A public body.

§ 96.13 Activities that do not require accreditation, approval, or supervision.

(a) *Home studies and child background studies.* A social work professional or organization that is performing a home study on the prospective adoptive parent(s) or a child background study (including any reports or updates) in connection with a Convention adoption but is not providing any other adoption service in the case is an “exempted provider.” Exempted providers do not have to be accredited, temporarily accredited, approved, or operate as a supervised provider. If the agency or person provides another adoption service in the case in addition to the home study or child background study, it must be accredited, temporarily accredited, approved, or operate as a supervised provider. The home study or child background study prepared by an exempted provider must be submitted to an accredited agency or temporarily accredited agency, not an approved person, for review and approval. An accredited agency or temporarily accredited agency must approve an exempted provider's home study in accordance with § 96.47(c) and an exempted provider's child background study in accordance with § 96.53(b).

(b) *Child welfare services.* An agency or person does not need to be

accredited, temporarily accredited, approved, or operate as a supervised provider if it is providing only child welfare services, and not providing any adoption services, in connection with a Convention adoption. If the agency or person provides both a child welfare service and any one of the six "adoption services" defined in § 96.2 in a Convention adoption case (including a home study or child background study), it must be accredited, temporarily accredited, or approved or operate as a supervised provider.

(c) *Legal services.* An agency or person does not need to be accredited, temporarily accredited, approved, or operate as a supervised provider if it is providing only legal services, and not providing any adoption services, in connection with a Convention adoption. If the agency or person provides both legal services and any one of the six "adoption services" defined in § 96.2 in a Convention adoption case (including a home study or child background study), it must be accredited, temporarily accredited, approved, or operate as a supervised provider. Nothing in this part shall be construed:

(1) To permit an attorney to provide both legal services and adoption services in an adoption case where doing so is prohibited by State law, or

(2) To require any attorney who is providing one or more adoption services as part of his or her employment by a public body to be accredited or approved or operate as a supervised provider.

(d) *Prospective adoptive parent(s) acting on own behalf.* Prospective adoptive parent(s) may act on their own behalf unless acting on their own behalf is prohibited by State law or the law of the Convention country. In the case of a child immigrating to the United States in connection with his or her adoption, such conduct must be permissible under the laws of the State in which the prospective adoptive parent(s) reside and the laws of the Convention country from which the parent(s) seek to adopt. In the case of a child emigrating from the United States in connection with his or her adoption, such conduct must be permissible under the laws of the State where the child resides and the laws of the Convention country in which the parent(s) reside.

§ 96.14 Providing adoption services using supervised providers, exempted providers, public bodies, or public authorities.

(a) Accreditation, temporary accreditation, and approval under this part requires that, in each Convention adoption case, an accredited agency, a temporarily accredited agency, or an

approved person will be identified and act as the primary provider. If one accredited agency, temporarily accredited agency, or approved person is providing all six "adoption services" listed in § 96.2 by itself, it must act as the primary provider. If just one accredited agency, temporarily accredited agency, or approved person is involved in providing some of the six "adoption services" listed in § 96.2, and the other providers are supervised providers, public bodies, public authorities, or exempted providers, the sole accredited agency, temporarily accredited agency, or approved person must act as the primary provider. If adoption services in the Convention case are being provided by more than one accredited agency, temporarily accredited agency, or approved person, the agency or person that has child placement responsibility, as evidenced by the following, must act as the primary provider throughout the case:

(1) Entering into placement contracts with prospective adoptive parent(s) to provide child referral and placement;

(2) Accepting custody from a birth parent or other legal custodian in another Convention country for the purpose of placement for adoption;

(3) Assuming responsibility for liaison with another Convention country's Central Authority or its designees with regard to arranging an adoption; or

(4) Receiving from or sending to another Convention country information about a child that is under consideration for adoption, unless acting as a local service provider that conveys such information to parent(s) on behalf of the primary provider.

(b) Pursuant to § 96.44, in the case of accredited agencies or approved persons, and § 96.104(g), in the case of temporarily accredited agencies, the primary provider may only use the following to provide adoption services in the United States:

(1) An accredited agency, temporarily accredited agency, or approved person;

(2) An exempted provider if the exempted provider's home study or child background study will be reviewed and approved by an accredited agency or temporarily accredited agency;

(3) A supervised provider; or

(4) A public body.

(c) Pursuant to § 96.44, in the case of accredited agencies or approved persons, and § 96.104(g), in the case of temporarily accredited agencies, the primary provider may only use the following to provide adoption services in another Convention country:

(1) A competent authority, a public authority, or an entity accredited by that

Convention country to provide services under the Convention; or

(2) An agency, person, or other entity that will act under the primary provider's supervision and responsibility (a foreign supervised provider).

(d) The primary provider is not required to provide supervision or assume responsibility for:

(1) Public bodies and agencies and persons accredited or approved in the United States pursuant to subpart F of this part; and

(2) Competent authorities and public authorities of other Convention countries, and entities accredited by other Convention countries.

(e) Public bodies, competent authorities, public authorities, and accredited agencies and approved persons are not required to operate under the supervision and responsibility of the primary provider.

(f) The primary provider must adhere to the standards contained in § 96.45 (U.S. supervised providers) when using supervised providers in the United States and the standards contained in § 96.46 (foreign supervised providers) when using supervised providers in other Convention countries.

§ 96.15 Public bodies.

Public bodies are not required to become accredited to be able to provide adoption services in Convention adoption cases, but must comply with the Convention, the IAA, and other applicable law when providing services in a Convention adoption case.

§ 96.16 Effective date of accreditation and approval requirements.

The Secretary will publish a document in the **Federal Register** announcing the date on which the Convention will enter into force for the United States. As of that date, the regulations in subpart C of this part will govern Convention adoptions between the United States and other Convention countries, and agencies or persons providing adoption services must comply with § 96.12 and applicable Federal regulations. The Secretary will maintain for the public a current listing of Convention countries.

§ 96.17 [Reserved]

Subpart D—Application Procedures for Accreditation and Approval

§ 96.18 Scope.

(a) Agencies are eligible to apply for "accreditation" or "temporary accreditation." Persons are eligible to apply for "approval." Temporary accreditation is governed by the

provisions in subpart N of this part. Unless otherwise provided in subpart N, the provisions of this subpart do not apply to agencies seeking temporary accreditation. Applications for full accreditation rather than temporary accreditation will be processed in accordance with § 96.20 and § 96.21.

(b) An agency or person seeking to be accredited or approved at the time the Convention enters into force for the United States, and to be included on the initial list of accredited agencies and approved persons that the Secretary will deposit with the Permanent Bureau of the Hague Conference on Private International Law, must follow the special provisions contained in § 96.19.

(c) If an agency or person is reapplying for accreditation or approval following cancellation of its accreditation or approval by an accrediting entity or refusal by an accrediting entity to renew its accreditation or approval, it must comply with the procedures in § 96.78.

(d) If an agency or person that has been accredited or approved is seeking renewal, it must comply with the procedures in § 96.63.

§ 96.19 Special provisions for agencies and persons seeking to be accredited or approved at the time the Convention enters into force for the United States.

(a) The Secretary will establish and announce, by public notice in the *Federal Register*, a “transitional application deadline.” An agency or person seeking to be accredited or approved at the time the Convention enters into force for the United States must submit an application to an accrediting entity, with the required fee(s), by the transitional application deadline. The Secretary will subsequently establish and announce a date by which such agencies and persons must complete the accreditation or approval process in time to be accredited or approved at the time the Convention enters into force for the United States (“deadline for initial accreditation or approval”).

(b) The accrediting entity must use its best efforts to provide a reasonable opportunity for an agency or person that applies by the transitional application deadline to complete the accreditation or approval process by the deadline for initial accreditation or approval. Only those agencies and persons that are accredited or approved by the deadline for initial accreditation or approval will be included on the initial list of accredited agencies and approved persons that the Secretary will deposit with the Permanent Bureau of the Hague

Conference on Private International Law.

(c) The accrediting entity may, in its discretion, permit an agency or person that fails to submit an application by the transitional application deadline to attempt to complete the accreditation or approval process in time to be included on the initial list; however, such an agency or person is not assured an opportunity to complete the accreditation or approval process in time to be included on the initial list. The accrediting entity must give priority to applicants that filed by the transitional application deadline. If such an agency or person succeeds in completing the accreditation or approval process in time to be included on the initial list, it will be treated as an agency or person that applied by the transitional application deadline for the purposes of § 96.58 and § 96.60(b).

§ 96.20 First-time application procedures for accreditation and approval.

(a) Agencies or persons seeking accreditation or approval for the first time may submit an application at any time, with the required fee(s), to an accrediting entity with jurisdiction to evaluate the application. If an agency or person seeks to be accredited or approved by the deadline for initial accreditation or approval, an agency or person must comply with the procedures in § 96.19.

(b) The accrediting entity must establish and follow uniform application procedures and must make information about those procedures available to agencies and persons that are considering whether to apply for accreditation or approval. The accrediting entity must evaluate the applicant for accreditation or approval in a timely fashion.

§ 96.21 Choosing an accrediting entity.

(a) An agency that seeks to become accredited must apply to an accrediting entity that is designated to provide accreditation services and that otherwise has jurisdiction over its application. A person that seeks to become approved must apply to an accrediting entity that is designated to provide approval services and otherwise has jurisdiction over its application. The agency or person may apply to only one accrediting entity at a time.

(b)(1) If the agency or person is applying for accreditation or approval pursuant to this part for the first time, it may apply to any accrediting entity with jurisdiction over its application. However, the agency or person must apply to the same accrediting entity that handled its prior application when it

next applies for accreditation or approval, if the agency or person:

(i) Has been denied accreditation or approval;

(ii) Has withdrawn its application in anticipation of denial;

(iii) Has had its accreditation or approval cancelled by an accrediting entity or the Secretary;

(iv) Has been temporarily debarred by the Secretary; or

(v) Has been refused renewal of its accreditation or approval by an accrediting entity.

(2) If the prior 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.

§ 96.22 [Reserved]

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. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N, the provisions in this subpart do not apply to agencies seeking temporary accreditation.

§ 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 or standards evaluation 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; and

(3) 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 the agency's or person's size, the number of adoption cases it handles, the number of sites the accrediting entity decides to visit, and 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 all information and documents, including case files and proprietary information, that it requires 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) If an agency or person fails to provide requested documents or information, or to make employees available as requested, the accrediting entity may deny accreditation or approval or, in the case of an accredited agency, temporarily 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, and other functions under its Agreement and this part. Unless otherwise authorized by the agency or person in writing, or required pursuant to subpart M of this part, 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 and approval and related functions under its Agreement and this part, or to provide information to the Secretary, the Complaint Registry, or an appropriate Federal, State, or local agency or law enforcement entity.

(b) Unless the names and other information that identifies birth parent(s), prospective adoptive parent(s), and adoptee(s) is 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 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 § 96.26(a) and (b). The accrediting entity must maintain an accurate record of the agency's or person's application, the supporting documentation, and the basis for its decision.

§ 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 under the standards contained in subpart F of this part, the accrediting entity may measure the capacity of the agency or person to achieve substantial compliance with these standards 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 contained in subpart F of this part, unless the accrediting entity determines that it is still necessary to measure capacity because adequate

evidence of actual performance is not available.

(c) The standards contained in subpart F of this part apply during all 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 Convention accreditation or approval.

(d) The accrediting entity will assign points to each different standard, or to each element of a standard, depending on the relative importance of the particular standard (or element) to compliance with the Convention and the IAA. The points to be given to the standard, or to elements of the standard, must be determined by the accrediting entity in consultation with the Secretary. The accrediting entity must advise applicants of the points assigned to the standards (or elements of the standards) at the time it provides them with the application materials.

(e) If an agency or person has previously been denied accreditation or approval, has withdrawn its application in anticipation of denial, has had its temporary accreditation withdrawn, or is reapplying for accreditation or approval after cancellation, refusal to renew, or temporary debarment, the accrediting entity may 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(a)(3) of the Social Security Act (42 U.S.C. 1320(a)(3)), has been debarred pursuant to § 96.85, the accrediting entity may take into account the reasons underlying the debarment when evaluating the agency or person for accreditation or approval, and may deny accreditation or approval or refuse to renew accreditation or approval on the basis of the debarment.

(g) The standards contained in subpart F of this part do not eliminate the need for an agency or person to comply fully with the laws of the

jurisdictions in which it operates. An agency or person must provide adoption services in Convention cases consistent with the laws of any State in which it operates and with the Convention and the IAA. 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 the standards in subparts E and F 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]

Subpart F—Standards for Convention Accreditation and Approval

§ 96.29 Scope.

The provisions in this subpart provide the standards for accrediting agencies and approving persons. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in subpart F of this part do not apply to agencies seeking temporary accreditation.

Licensing and Corporate Governance

§ 96.30 State licensing.

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

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

(c) If it provides adoption services in a State in which it is not itself licensed or authorized to provide such services, the agency or person does so only through agencies, persons, or other entities that are licensed or authorized by State law to provide adoption services in that State.

(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 Convention countries that prohibit individuals or for-profit entities from providing adoption services.

§ 96.31 Corporate structure.

(a) The agency qualifies for non-profit tax treatment under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or for non-profit 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 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 in carrying out the adoption-related functions of the organization. This standard does not apply where the person is an individual practitioner.

(b) The agency or person has a board of directors or similar governing body that establishes and approves its mission, policies, budget, and programs; provides leadership to secure the resources needed to support its programs; 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.

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.

(b) The agency's or person's finances are subject to independent annual audits.

(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 generally maintains sufficient cash reserves or other financial resources to meet its operating expenses for three months, taking into account its projected volume of cases.

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

(g) The agency or person uses an independent professional assessment of

the risks it assumes as the basis for determining the type and amount of professional, general, directors' and officers', and other liability insurance to carry. The risk assessment includes an evaluation of the risks of using supervised providers as provided for in § 96.45 and § 94.46 and of providing adoption services to clients who, consistent with § 96.39(d), will not sign blanket waivers of liability.

(h) The agency or person maintains insurance in amounts reasonably related to its exposure to risk, including the risks of providing services through supervised providers, but in no case in an amount less than \$1,000,000 per occurrence.

(i) 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 any individual providing intercountry adoption services with incentive fees for each child placed for adoption or on a similar contingent fee basis.

(b) The agency or person compensates its directors, officers, employees, and supervised providers who provide intercountry adoption services 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 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, and employees of the agency or person are not unreasonably high in relation to the services actually rendered, taking into account the location, number, and qualifications of staff, workload requirements, budget, and size of the agency or person, and available norms for compensation within the intercountry adoption community.

(e) Any other compensation paid 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 non-profit status.

Ethical Practices and Responsibilities

§ 96.35 Suitability of agencies and persons to provide adoption services consistent with the Convention.

(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 relating to the agency or person under its current or any former names:

(1) Any instances in which the agency or person has permanently lost the right to provide adoption services in any State or a 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, 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) against the agency or person, relating to the provision of adoption-related services, including the basis and disposition of such complaint(s);

(6) For the prior ten-year period, any past or pending investigation(s) by Federal or State authorities, criminal charge(s), child abuse charge(s), malpractice complaint(s), or lawsuit(s) against the agency or person, related to the provision of 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 any civil or administrative violations under Federal, State, or foreign law involving financial irregularities;

(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 are currently carried out by an agency or person, affiliate organizations, or by any entity in which the agency or person has an ownership or control 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 also 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 or current investigations of any such individual who is in a senior financial 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) A completed FBI Form FD-258 for each such individual in the United States in a senior management position or who works directly with parent(s) and/or children, which the agency or person must keep on file in case future allegations warrant submission of the form for a Federal criminal background check of any such individual.

(5) Descriptions of any businesses or activities that are inconsistent with the principles of the Convention and that are currently carried out by 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 does as follows:

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

(2) Completes and retains a FBI Form FD-258 on file in case future allegations warrant submission of the form for a Federal criminal background check; and

(3) If the individual is 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.

(e) Any disciplinary action considered by a State Bar Association, including consideration of an action to disbar an attorney, must immediately be reported by the attorney to the accrediting entity, regardless of whether the action relates to intercountry adoption.

(f) 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 § 96.35 within thirty business days of learning of the change.

§ 96.36 Prohibition on child buying.

(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.

Professional Qualifications and Training for Employees

§ 96.37 Education and experience requirements for social service personnel.

(a) The agency or person only uses employees with appropriate qualifications and credentials to perform, in connection with a Convention 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) The agency's or person's employees meet any State licensing or regulatory requirements for the services they are providing.

(c) 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) have 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 education;

(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 is or was an incumbent at the time the Convention enters into force for the United States, the supervisor has significant skills and experience in intercountry adoption and has regular access for consultation purposes to an individual with the qualifications listed in paragraph (d)(1) or paragraph (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:

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

(2) Have a bachelor's degree from an accredited program of social work education; a combination of a bachelor's degree in another human service field and prior experience in family and children's services, adoption, or intercountry adoption; or a bachelor's degree in any field and extensive experience in intercountry adoption. Additionally, the non-supervisory employees are supervised by an employee of the accredited agency or approved 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) Have a minimum of a master's degree from an accredited program of social work education or 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;

(2) Are authorized to complete a home study under the laws of the State of the child's proposed residence; and

(3) Meet the INA requirements for home study preparers in 8 CFR 204.3(b) covering home studies in Convention cases.

(g) Child background studies. The agency's or person's employees who prepare child background studies have a minimum of a master's degree from an accredited program of social work education or 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.

§ 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 regulations implementing the IAA, and other applicable Federal regulations;

(2) The INA regulations applicable to the immigration of children adopted from a Convention country;

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

(4) Relevant State laws;

(5) 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) The agency or person provides initial training to 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) 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) Attachment and post-traumatic stress disorders;

(4) Psychological issues facing children who have experienced abuse or

neglect and/or whose parents' rights have been terminated because of abuse or neglect;

(5) The impact of institutionalization on child development;

(6) Outcomes for children placed for adoption internationally, and the most frequent medical and psychological problems experienced by children from the countries of origin served by the agency or person;

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

(8) 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

(9) Child, adolescent, and adult development.

(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 20 hours of training each year, or more if required by State law, on current and emerging adoption practice issues through participation in seminars, conferences, and other similar programs.

(d) The agency or person exempts employees from elements of the orientation and training required in paragraphs (a) and (b) of this section only where the employee has prior experience with intercountry adoption and knowledge of the Convention and the IAA.

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, fees, and the mutual rights and responsibilities of clients and the agency or person;

(2) A sample of a contract substantially like the one that the prospective client(s) will be expected to sign should they proceed; and

(3) The entities 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.

(b) The agency or person maintains and makes available upon request to client(s) and prospective client(s) information on:

(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 awaiting adoption, when available.

(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 does not require a client or prospective client to sign a blanket waiver of liability in connection with the provision of adoption services in Convention cases.

(e) The agency or person cooperates with reviews, inspections, and audits.

(f) The agency or person uses the internet to place particular children 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 estimated fees and expenses and an explanation of the conditions under which fees or expenses may be charged, waived, reduced, or refunded and of 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 expenses that the prospective adoptive parent(s) will be charged in connection with a Convention adoption:

(1) *Home Study*. The expected total fees and expenses for home study preparation, whether the home study is to be prepared directly by an accredited agency or temporarily accredited agency, or prepared by a supervised provider, exempted provider, or approved person and reviewed and approved by an accredited agency or temporarily accredited agency;

(2) *Adoption expenses in the United States*. The expected total fees and 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, 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 expenses for all adoption services that will be provided in the child's Convention country. This category includes, but is not limited to, costs for care of the child prior to adoption, costs for personnel, administrative overhead, training, education, and communications, and any other costs related to providing adoption services in the child's Convention country;

(4) *Translation and document expenses*. The expected total fees and 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, either in the United States or in the child's Convention country, or through the agency or person. This category includes, but is not limited to, costs for obtaining or copying records or documents required to complete the adoption, costs for the child's Convention court documents, passport, adoption certificate and other documents related to the adoption, and costs for notarizations and certifications;

(5) *Travel and accommodation expenses*. The expected total fees and expenses for any travel and accommodation services arranged by the agency or person for the prospective adoptive parent(s);

(6) *Contributions*. Any fixed contribution amount 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 Convention country or in the United States, along

with an explanation of the intended use of the contribution and the manner in which the transaction will be recorded and accounted for; and

(7) *Post-placement and post-adoption reports*. The expected total fees and 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) The agency or person also specifies in its written adoption contract when and how funds advanced to cover fees or expenses will be refunded if adoption services are not provided.

(d) 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) an explanation of the use of such funds.

(e) The agency or person has mechanisms in place for transferring funds to Convention countries when the financial institutions of the Convention 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 other Convention country are minimized or unnecessary.

(f) The agency or person does not customarily charge additional fees and expenses beyond those disclosed in the adoption contract and has a written policy to this effect. In the event that unforeseen additional fees and expenses are incurred in the other Convention country, the agency or person charges 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 \$800 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 and 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 in the Convention

country and retains copies of such receipts.

(g) When its delivery of services is completed, the agency or person gives the prospective adoptive parent(s) an accounting of both the total fees and expenses incurred within thirty days of the completion of the delivery of the services.

(h) The agency or person returns any funds to which the prospective adoptive parent(s) may be entitled at the same time that the agency or person provides the accounting required in paragraph (g) of this section.

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 contract is signed.

(b) The agency or person permits any birth parent, prospective adoptive parent, or adoptee to lodge a complaint or appeal about any of the services or activities of the agency or person that he or she believes are inconsistent with the Convention, the IAA, or the regulations implementing the IAA.

(c) The agency or person responds in writing to complaints within thirty days of receipt, and provides expedited review of complaints that are time-sensitive or that involve allegations of fraud.

(d) The agency or person maintains a written record of each complaint and the steps taken to investigate and respond to it and makes this record available to the accrediting entity, the Complaint Registry, 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, 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 Complaint Registry, on a quarterly basis, a summary of all complaints received during the preceding quarter (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, 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 such other information about complaints received as may be requested by the accrediting entity, the Complaint Registry, 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 retrievable manner for the period of time required by applicable State law.

(b) The agency or person makes readily available to the adoptee or the adoptive parent(s) upon request all non-identifying information in its custody about the adoptee's health history or background.

(c) The agency or person preserves and discloses information in its custody about the adoptee's origin, social history, and birth parents' identity in accordance with applicable State law.

(d) The agency or person protects the privacy of birth parent(s), prospective adoptive parent(s), and adoptee(s) to whom adoption services were provided and safeguards sensitive information.

(e) 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.

(f) The agency or person has a plan that is consistent with the provisions of this section 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 under the Convention.

(g) The agency or person notifies the accrediting entity and the Secretary in writing within thirty 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 intercountry adoptions undertaken by the agency or person each year in both Convention and non-Convention cases and, for each case:

(i) The Convention country or other country from which the child emigrated;

(ii) The State to which the child immigrated;

(iii) The State, Convention country, or other 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 intercountry adoptions undertaken by the agency or person each year in both Convention and non-Convention cases and, for each case:

(i) The State from which the child emigrated;

(ii) The Convention country or other country to which the child immigrated;

(iii) The State, Convention country, or other 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 a Convention adoption, information and reports about the disruption, including information on:

(i) The Convention 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 a Convention adoption, information and reports on the dissolution, including information on:

- (i) The Convention 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 a Convention 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 Convention 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 directly to the Secretary and as required by 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 provides, either directly or through arrangements with other accredited agencies, temporarily accredited agencies, approved persons, supervised providers, exempted providers, public bodies, competent authorities, or public authorities, all six "adoption services" listed in § 96.2, and develops and implements a service plan for providing all six of the required adoption services.

(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 Convention adoption case and, when acting as the primary provider, provides appropriate supervision to supervised 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) 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

(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.

(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) Clearly identifies 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 consents (§ 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) (blanket waivers of liability), and § 96.41(a) 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) Clearly states 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 thirty 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;

(8) Provides that the primary provider will retain legal responsibility for each case in which adoption services are provided, as required by paragraph (c) of this section;

(9) Requires the supervised provider to protect the privacy of the individuals it serves, safeguard sensitive information, and ensure that personal data gathered or transmitted in connection with an adoption is used only for the purposes for which the information was gathered;

(10) Requires the 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;

(11) 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;

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

(13) 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.

(c) The agency or person, when acting as the primary provider and using supervised providers in the United States to provide adoption services, does the following in relation to risk management:

(1) Assumes tort, contract, and other civil liability to the prospective adoptive parent(s) for the supervised

provider's provision of the contracted adoption services and its compliance with the standards in this subpart F; and

(2) Maintains a bond, escrow account, or liability insurance in an amount sufficient to cover the risks of liability arising from its work with supervised providers.

(d) Nothing in this section shall be construed as prohibiting the primary provider from obtaining indemnification or from seeking damages or other redress from a supervised provider for breach of contract, or from pursuing any other legal claim against such supervised provider arising from the provision of contracted adoption services.

§ 96.46 Using supervised providers in other Convention countries.

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

(1) Is in compliance with the laws of the Convention 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 Convention country that are analogous to the authorities identified in that section; and

(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.

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

(1) Clearly identifies 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 prohibit child buying by any of its employees and agents; to have a

written policy prohibiting 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, other than reasonable or required payments for activities related to the adoption proceedings, pre-birth and birth medical costs, the care of the child, or the provision of child welfare and child protection services generally; and to provide training to its employees and agents on this policy;

(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 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) Clearly states the compensation arrangement for the services to be provided and the fees and expenses to be charged by the foreign supervised provider;

(7) Specifies whether the foreign 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;

(8) Provides that, if billing the client(s) directly for its service, the foreign 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 thirty days of the completion of the delivery of services;

(9) Provides that the primary provider will retain legal responsibility for each case in which adoption services are provided, as required by paragraph (c) of this section;

(10) 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;

(11) 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;

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

(13) 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 using foreign supervised providers to provide adoption services in other Convention countries, does the following in relation to risk management:

(1) Assumes tort, contract, and other civil liability to the prospective adoptive parent(s) for the foreign supervised provider's provision of the contracted adoption services and its compliance with the standards in this subpart F; and

(2) Maintains a bond, escrow account, or liability insurance in an amount sufficient to cover the risks of liability arising from its work with foreign supervised providers.

(d) Nothing in this section shall be construed as prohibiting the primary provider from obtaining indemnification or from seeking damages or other redress from a foreign supervised provider for breach of contract, or from pursuing any other legal claim against such supervised provider arising from the provision of contracted adoption services.

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) is completed that includes the following:

(1) Information about the prospective adoptive parent(s)' identity, eligibility and suitability 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 whether the prospective adoptive parent(s) are eligible and suited to adopt;

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

(4) The results of a criminal background check on the prospective adoptive parent(s) and any other individual for whom a check is required by 8 CFR 204.3(e);

(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 204.3(e), and any applicable State law.

(c) Where the home study is not performed in the first instance by an accredited agency or temporarily accredited agency (that is, it was initially prepared by an approved person or an exempted provider), the agency or person ensures that the home study is reviewed and approved in writing by an accredited agency or temporarily 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 204.3(e), and applicable State law; and

(2) Was performed by an individual who meets the personnel qualifications in § 96.37(f), or, if the individual is an exempted provider, ensure that the individual meets the requirements for home study providers established by 8 CFR 204.3(b).

(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 (including any supplemental statement to the home study) to the Central Authority or other competent authority of the child's country of origin.

§ 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 intercountry conditions that affect children in the Convention 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 Convention 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, and 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 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;

(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 parent(s) in light of the particular child(ren) 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 where the 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 to the prospective adoptive parent(s) at least two weeks before either the adoption or placement for adoption, or the date on which the prospective adoptive parent(s) travel to the other Convention country to complete all procedures in such country relating to the adoption or placement for adoption, whichever is earlier.

(b) To the fullest extent practicable, the agency or person provides the prospective adoptive parent(s) with a correct and complete English-language translation of the records and, where the medical records provided pursuant to paragraph (a) of this section are a summary or compilation of other

medical records, the agency or person provides a copy of the original medical records used to create that summary or compilation if the original medical records are available.

(c) The agency or person provides the prospective adoptive parent(s) with an opportunity to arrange another 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 or agent 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 Convention 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, and changes in the child's condition since the Convention country or other child welfare authority assumed custody of the child;

(3) Growth data and developmental status 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) If the agency or person provides medical information 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 information includes:

(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;

(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 whether the individual relied on objective data or subjective perceptions in drawing 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 or agent 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 history and cultural, racial, religious, ethnic, and linguistic background; and

(2) Information about all of the child's past and current placements prior to adoption, including information on who assumed custody and provided care for the child.

(g) Where any of the information listed in paragraphs (d) 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.

(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 videotapes and photographs of the child are identified by the date on which the videotape or photograph was recorded or taken.

(j) Neither the agency or person nor its agents withhold from or misrepresent to the prospective adoptive parent(s) any 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 at least a week (unless extenuating circumstances involving the child's best interests require a more expedited decision) to consider the needs of the child and their ability to meet those needs, and to obtain physician review of medical information and other descriptive information, including videotapes of the child.

§ 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) After the child is placed with the prospective adoptive parent(s) prior to the adoption, 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, 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) When counseling in a placement for adoption that is in crisis 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 written adoption 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 on a child to the other Convention country when required by the other Convention country. Where such reports are required, the agency or person:

(1) Informs the prospective adoptive parent(s) 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 entered in compliance with section 301(c) of the IAA (Pub. L. 106-279, section 301(c), 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 either informs the prospective adoptive parent(s) in the written adoption contract that the agency or person will not provide services if an adoption is dissolved or provides a plan describing the agency's or person's responsibilities, if any, if 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 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.

(e) If the agency or person voluntarily provides post-adoption services, it ensures that the individual providing such services has knowledge of post-adoption issues and, if possible, of the legal, social, cultural, and emotional issues pertinent to the particular adoption case in which it is involved.

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

(a) The agency or person keeps the Central Authority of the other Convention country and the Secretary informed 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 other Convention country, to:

(1) Transmit on a timely basis the home study to the Central Authority or other competent authority of the child's country of origin;

(2) Obtain the child background study, proof that the necessary consents to the child's adoption have been obtained, and the necessary determination that the prospective placement is in the child's best interests, from the Central Authority or other competent authority in the child's country of origin;

(3) Provide confirmation that the prospective adoptive parent(s) agree to the adoption to the Central Authority or other competent authority in the child's country of origin; and

(4) Transmit the determination that the child is or will be authorized to enter and reside permanently in the United States to the Central Authority or other competent authority in the child's country of origin.

(c) The agency or person takes all necessary and appropriate measures, consistent with the procedures of the other Convention 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) Where the transfer of the child does not take place, the agency or person returns the home study on the prospective adoptive parent(s) and/or the child background study to the authorities that forwarded them.

(e) The agency or person takes all necessary and appropriate measures to perform any tasks in a Convention adoption case that the Secretary identifies are required to comply with the Convention, the IAA, or any regulations implementing the IAA.

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

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

(b) Where the child background study is not prepared in the first instance by an accredited agency or temporarily accredited agency (that is, it was initially prepared by an approved person or exempted provider), it ensures that the background study is reviewed and approved in writing by an accredited agency or temporarily accredited agency. The written approval must include a determination that the background study:

(1) Includes all the information required by paragraph (a) of this section;

(2) Evidences that consents were obtained in accordance with paragraph (c) of this section;

(3) Reflects consideration of the child's wishes and opinions in accordance with paragraph (d) of this section; and

(4) Was prepared either by an exempted provider or by an individual who meets the personnel qualifications set forth in § 96.37(g).

(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, including that it will result in the child living in another country; 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 ten 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 takes all appropriate measures to transmit to the Central Authority or other competent authority of the other 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 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 thirty 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 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 to find a timely adoptive placement for the child in the United States were made, or that making such reasonable efforts was not in the best interests of the child.

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

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

(2) 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) If and as required by State law, the agency or person provides the birth parent(s) with independent legal counsel at the expense of the agency or person or the prospective adoptive parent(s), and fully discloses to the birth parent(s) that the child is to be adopted by parent(s) who reside outside the United States.

(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 another 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 other 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 Hague Convention communication and coordination functions in outgoing cases.

(a) The agency or person keeps the Central Authority of the other Convention country and the Secretary informed 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) Where the transfer of the child does not take place, the agency or person returns the home study on the prospective adoptive parent(s) and/or the child background study to the authorities that forwarded them.

(d) The agency or person provides to the State court with jurisdiction over the adoption:

(1) Proof that consents have been given as required in § 96.53(c);

(2) An English copy or certified English translation of the home study on the prospective adoptive parent(s) in the other 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 other 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 other 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 identifies are required to comply with

the Convention, the IAA, or any regulations implementing the IAA.

§ 96.56 [Reserved]

Subpart G—Decisions on Applications for Accreditation or Approval

§ 96.57 Scope.

The provisions in this subpart establish the procedures for when the accrediting entity issues decisions on applications for accreditation or approval. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in subpart G of this part do not apply to agencies seeking temporary accreditation.

§ 96.58 Notification of accreditation and approval decisions.

(a) The accrediting entity must notify agencies and persons that applied by the transitional application deadline of its accreditation and approval decisions on a uniform notification date to be established by the Secretary. On that date, the accrediting entity must inform each applicant and the Secretary in writing whether the agency's or person's application has been granted or denied or remains pending. The accrediting entity may not provide any information about its accreditation or approval decisions to any agency or person or to the public until the uniform notification date. If the Secretary requests information on the interim or final status of an applicant prior to the uniform notification date, the accrediting entity must provide such information to the Secretary.

(b) Notwithstanding the provisions in paragraph (a) of this section, the accrediting entity may, in its discretion, communicate with agencies and persons that applied by the transitional application deadline about the status of their pending applications for the sole purpose of affording them an opportunity to correct deficiencies that may hinder or prevent accreditation or approval.

(c) The accrediting entity must routinely inform applicants that applied after the transitional application deadline in writing of its accreditation and approval decisions, as those decisions are finalized, but may not do so earlier than the uniform notification date referenced in paragraph (a) of this section. The accrediting entity must routinely provide this information to the Secretary in writing.

§ 96.59 Review of decisions to deny accreditation or approval.

(a) There is no administrative or judicial review of an accrediting entity's decision to deny an application for accreditation or approval. As provided in § 96.79, a decision to deny for these purposes includes:

(1) A denial of the agency's or person's initial application for accreditation or approval;

(2) A denial of an application made after cancellation or refusal to renew by the accrediting entity; and

(3) A denial of an application made after cancellation or debarment by the Secretary.

(b) The agency or person may petition the accrediting entity for reconsideration of a denial. The accrediting entity must establish internal review procedures that provide an opportunity for an agency or person to petition for reconsideration of the denial.

§ 96.60 Length of accreditation or approval period.

(a) Except as provided in paragraph (b) of this section, the accrediting entity will accredit or approve an agency or person for a period of four years. The accreditation or approval period will commence either on the date the Convention enters into force for the United States (if the agency or person is accredited or approved before that date) or on the date that the agency or person is granted accreditation or approval.

(b) In order to stagger the renewal requests from agencies and persons that applied for accreditation or approval by the transitional application deadline, so as to prevent renewal requests from coming due at the same time, the accrediting entity may, in consultation with the Secretary, accredit or approve some agencies and persons that applied by the transitional application deadline for a period of between three and five years for their first accreditation or approval cycle. The accrediting entity must establish criteria, which must be approved by the Secretary, for choosing which agencies and persons it will accredit or approve for a period of other than four years.

§ 96.61 [Reserved]

Subpart H—Renewal of Accreditation or Approval

§ 96.62 Scope.

The provisions in this subpart establish the procedures for renewal of an agency's accreditation or a person's approval. Temporary accreditation may not be renewed, and the provisions in

subpart H of this part do not apply to temporarily accredited agencies.

§ 96.63 Renewal of accreditation or approval.

(a) The accrediting entity must advise accredited agencies and approved persons it is responsible for monitoring of the date by which they should seek renewal of their accreditation or approval so that the renewal process can reasonably be completed before the agency's or person's current accreditation or approval expires. If the accredited agency or approved person wishes to renew its accreditation or approval, it must seek renewal by this date. If the accredited agency or approved person does not wish to renew its accreditation or approval, it must immediately notify the accrediting entity and take all necessary steps to complete its Convention cases and to transfer its pending Convention cases and adoption records to other accredited agencies, approved persons, or a State archive, as appropriate, under the oversight of the accrediting entity, before its accreditation or approval expires.

(b) The accredited agency or approved person may seek renewal from a different accrediting entity than the one that handled its prior application. If it changes accrediting entities, the accredited agency or approved person must so notify the accrediting entity that handled its prior application by the date on which the agency or person must (pursuant to paragraph (a) of this section) seek renewal of its status. The accredited agency or approved person must follow the accrediting entity's instructions when submitting a request for renewal and preparing documents and other information for the accrediting entity to review in connection with the renewal request.

(c) The accrediting entity must process the request for renewal in a timely fashion. Before deciding whether to renew the accreditation or approval of an agency or person, the accrediting entity may, in its discretion, advise the agency or person of any deficiencies that may hinder or prevent its renewal and defer a decision to allow the agency or person to correct the deficiencies. The accrediting entity must routinely notify the accredited agency, approved person, and the Secretary in writing when it renews or refuses to renew an agency's or person's accreditation or approval.

(d) Sections 96.25 and 96.26, relating to requests for and use of information, and § 96.27, relating to the substantive criteria for evaluating applicants for accreditation or approval, other than

§ 96.27(e), will govern determinations whether to renew accreditation or approval. In addition, in lieu of § 96.27(e), if the agency or person has been suspended by an accrediting entity or the Secretary during its most current accreditation or approval cycle, the accrediting entity may take the reasons underlying the suspension into account when determining whether to renew accreditation or approval and may refuse to renew accreditation or approval based on the prior suspension.

§ 96.64 [Reserved]

Subpart I—Routine Oversight by Accrediting Entities

§ 96.65 Scope.

The provisions in this subpart establish the procedures for routine oversight of accredited agencies and approved persons. Temporary accreditation is governed by the provisions of subpart N of this part. Unless otherwise provided in subpart N, the provisions in subpart I of this part do not apply to temporarily accredited agencies.

§ 96.66 Oversight of accredited agencies and approved persons by the accrediting entity.

(a) The accrediting entity must monitor agencies it has accredited and persons it has approved at least annually to ensure that they are in substantial compliance with the standards in subpart F of this part. The accrediting entity must investigate complaints about accredited agencies and approved persons, as provided in subpart J of this part.

(b) An accrediting entity may, on its own initiative, conduct site visits to inspect an agency's or person's premises or programs, with or without advance notice, for purposes of random verification of its continued compliance or to investigate a complaint. The accrediting entity may consider any information about the agency or person that becomes available to it about the compliance of the agency or person. The provisions of §§ 96.25 and 96.26 govern requests for and use of information.

§ 96.67 [Reserved]

Subpart J—Oversight Through Review of Complaints

§ 96.68 Scope.

The provisions in this subpart establish the procedures for processing complaints against accredited agencies and approved persons. Temporary accreditation is governed by the provisions of subpart N of this part, and as provided for in § 96.103, procedures

for processing complaints on temporarily accredited agencies must comply with subpart J of this part.

§ 96.69 Filing of complaints against accredited agencies and approved persons.

(a) Complaints against accredited agencies and approved persons may be made as follows:

(1) The complaint must first be filed with the agency or person providing adoption services;

(2) If the agency or person against whom the complaint is being made is a supervised provider, the complaint must also be filed with the primary provider;

(3) If a complaint is filed with a supervised provider, the supervised provider must instruct the complainant to also file the complaint with the primary provider and must provide the complainant with the primary provider's contact information;

(4) If the complaint cannot be resolved through the complaint processes of the agency or person providing the services or the primary provider (if different), or if the complaint was resolved by an agreement to take action but the agency or person providing the service or the primary provider (if different) failed to take such action within thirty days of agreeing to do so, the complaint may then be filed with the Complaint Registry in accordance with § 96.70, which will refer the complaint to the accrediting entity or other appropriate authority in accordance with § 96.70(b).

(b) A Federal government body, including DHS, a public body, any law enforcement authority or licensing authority, or a foreign Central Authority may make complaints directly to the Complaint Registry or the accrediting entity overseeing the accredited agency or approved person. Federal government bodies, including DHS, may report complaints directly to the Secretary.

§ 96.70 Review of complaints about accredited agencies and approved persons by the Complaint Registry.

(a) The Secretary shall establish a Complaint Registry to assist the Secretary in executing his or her oversight responsibilities and to perform such functions on behalf of the accrediting entity as the Secretary may determine. The Secretary may provide for the Complaint Registry to be funded in whole or in part from fees collected by the Secretary pursuant to section 403(b) of the IAA (Pub. L. 106–279, section 403(b), 42 U.S.C. 14943(b)) or by the accrediting entity(s).

(b) The Secretary will provide for the Complaint Registry to:

(1) Record, screen, refer (to the appropriate accrediting entity, the Secretary, or a law enforcement or other agency), and track the resolution and disposition of complaints that could not be resolved through the complaint processes of the relevant agency or person that provided the service in question, or the primary provider (if different);

(2) Record, screen, refer (to the appropriate accrediting entity, the Secretary, or a law enforcement or other agency), and track the resolution and disposition of cases in which the agency or person that provided the service in question, or the primary provider (if different) failed to take specific remedial action on a complaint within thirty days of agreeing to do so;

(3) Report possible patterns of complaints made at any time against a particular accredited agency or approved person to the accrediting entity overseeing that agency or person; and

(4) Perform such other functions as the Secretary may assign to it to assist the accrediting entity or the Secretary in exercising their oversight and other responsibilities under the IAA.

(c) The Secretary will post on the Department's Web site contact information necessary for submitting complaints to the Complaint Registry and information concerning its precise functions.

§ 96.71 Review of complaints against accredited agencies and approved persons by the accrediting entity.

(a) The accrediting entity must establish written procedures, including deadlines, for recording, investigating, and acting upon complaints it receives about agencies it has accredited and persons it has approved. The procedures must be consistent with this section and be approved by the Secretary. The accrediting entity must make written information about its complaint procedures available upon request.

(b) If the accrediting entity determines that a complaint implicates the Convention, the IAA, or the regulations implementing the IAA, it must act as follows:

(1) Unless the complaint was made directly to the Complaint Registry or the accrediting entity pursuant to § 96.69(b), the accrediting entity must verify whether the complainant has already attempted to resolve the complaint through the internal complaint procedures of the agency or person that provided the service or the primary provider (if different) and, if not, may refer the complaint to the agency or person, or to the primary provider, for

attempted resolution through its internal complaint procedures.

(2) The accrediting entity may conduct whatever investigative activity (including site visits) it considers necessary to determine whether the accredited agency or approved person may maintain accreditation or approval as provided in § 96.27. The provisions of §§ 96.25 and 96.26 govern requests for and use of information. The accrediting entity must give priority to complaints submitted from the Secretary, other Federal government bodies, including DHS, any law enforcement or licensing authority, a public body, or a foreign Central Authority.

(3) If the accrediting entity determines that the agency or person may not maintain accreditation or approval, it must take adverse action pursuant to subpart K of this part.

(c) When the accrediting entity has completed its complaint review process, it must provide written notification of the outcome of its investigation, and any actions taken, to the complainant, the Complaint Registry, and to any other entity that referred the information.

(d) The accrediting entity may not take any action to discourage an individual from, or retaliate against an individual for, making a complaint, expressing a grievance, questioning the conduct of, or expressing an opinion about the performance of an accredited agency, an approved person, or the accrediting entity.

§ 96.72 Referral of complaints to the Secretary and other authorities.

(a) An accrediting entity must report promptly to the Secretary any substantiated complaint that:

(1) Reveals that an accredited agency or approved person has engaged in a pattern of serious, willful, grossly negligent, or repeated failures to comply with the standards in subpart F of this part; or

(2) Indicates that continued accreditation or approval would not be in the best interests of the children and families concerned.

(b) An accrediting entity must, after consultation with the Secretary, refer to the Attorney General or other appropriate law enforcement authorities any substantiated complaints that involve conduct that is:

(1) Subject to the civil or criminal penalties imposed by section 404 of the IAA (Pub. L. 106–279, section 404, 42 U.S.C. 14944);

(2) In violation of the Immigration and Nationality Act (8 U.S.C. 1101 *et seq.*); or

(3) Otherwise in violation of Federal, State, or local law.

(c) When an accrediting entity makes a report pursuant to paragraphs (a) or (b) of this section, it must indicate whether it is recommending that the Secretary take action to debar the agency or person, either temporarily or permanently.

§ 96.73 [Reserved]

Subpart K—Adverse Action by the Accrediting Entity

§ 96.74 Scope.

The provisions in this subpart establish the procedures governing adverse action by an accrediting entity against accredited agencies and approved persons. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in subpart K of this part do not apply to temporarily accredited agencies.

§ 96.75 Adverse action against accredited agencies or approved persons not in substantial compliance.

The accrediting entity must take adverse action when it determines that an accredited agency or approved person may not maintain accreditation or approval as provided in § 96.27. The accrediting entity is authorized to take any of the following actions against an accredited agency or approved person whose compliance the entity oversees. Each of these actions by an accrediting entity is considered an adverse action for purposes of the IAA and the regulations in this part:

(a) Suspending accreditation or approval;

(b) Canceling accreditation or approval;

(c) Refusing to renew accreditation or approval;

(d) Requiring an accredited agency or approved person to take a specific corrective action to bring itself into compliance;

(e) Imposing other sanctions including, but not limited to, requiring an accredited agency or approved person to cease providing adoption services in a particular case or in a specific Convention country.

§ 96.76 Procedures governing adverse action by the accrediting entity.

(a) The accrediting entity must decide which adverse action to take based on the seriousness and type of violation and on the extent to which the accredited agency or approved person has corrected or failed to correct deficiencies of which it has been

previously informed. The accrediting entity must notify an accredited agency or approved person in writing of any decision to take an adverse action against the agency or person. The accrediting entity's written notice must identify the deficiencies prompting imposition of the adverse action.

(b) Before taking adverse action, the accrediting entity may, in its discretion, advise the agency or person of the deficiencies warranting adverse action and provide it with an opportunity to take corrective action and demonstrate compliance before the adverse action is imposed. If the accrediting entity took adverse action but did not communicate with the accredited agency or approved person about the deficiency in advance (such as in a situation in which providing advance notice is not consistent with ensuring that a child's well-being is protected), the accrediting entity must allow the accredited agency or approved person an opportunity after the notice is issued to provide information refuting that adverse action was warranted. The accrediting entity may withdraw the adverse action based on the information provided.

(c) The provisions in §§ 96.25 and 96.26 govern requests for and use of information.

§ 96.77 Responsibilities of the accredited agency, approved person, and accrediting entity following adverse action by the accrediting entity.

(a) If the accrediting entity takes an adverse action against an agency or person, the action will take effect immediately unless the accrediting entity agrees to a later effective date.

(b) If the accrediting entity suspends or cancels the accreditation or approval of an agency or person, the agency or person must immediately, or by any later effective date set by the accrediting entity, cease to provide adoption services in all Convention cases. In the case of suspension, it must consult with the accrediting entity about whether to transfer its Convention adoption cases and its adoption records. In the case of cancellation, it must, under the oversight of the accrediting entity, transfer its Convention adoption cases and adoption records to other accredited agencies, approved persons, or a State archive as appropriate.

(c) If the accrediting entity refuses to renew the accreditation or approval of an agency or person, the agency or person must cease to provide adoption services in all Convention cases upon expiration of its existing accreditation or approval. It must take all necessary steps to complete its Convention cases before its accreditation or approval

expires. It must also, under the oversight of the accrediting entity, transfer its pending Convention cases and adoption records. When the agency or person is unable to transfer such Convention cases or adoption records, the accrediting entity must, after consultation with the Secretary, take appropriate action to assist the agency or person in transferring its Convention cases and adoption records.

(d) The accrediting entity must immediately notify the Secretary in writing when it takes an adverse action that impacts the accreditation or approval status of an agency or person.

§ 96.78 Petitions to terminate adverse action by the accrediting entity.

(a) If the accrediting entity takes adverse action against an agency or person, the agency or person must petition the accrediting entity to terminate the adverse action, on the grounds that the deficiencies necessitating the adverse action have been corrected, before it can seek judicial review. The accrediting entity may terminate the adverse action only if the agency or person demonstrates to the satisfaction of the accrediting entity that the deficiencies that led to the adverse action have been corrected. The accrediting entity must notify an agency or person in writing of its decision on the petition to terminate the adverse action. If the accrediting entity does not terminate the adverse action after being petitioned to do so in accordance with this paragraph, the agency or person may seek judicial review of the adverse action.

(b) If the accrediting entity described in paragraph (a) of this section is no longer providing accreditation or approval services, the agency or person may petition any accrediting entity with jurisdiction over its application.

(c) If the accrediting entity cancels or refuses to renew an agency's or person's accreditation or approval, and does not terminate the adverse action pursuant to paragraph (a) of this section, the agency or person must reapply for accreditation or approval if it wishes to become accredited or approved again. Before doing so, the agency or person must request and obtain permission to make a new application from the accrediting entity that cancelled or refused to renew its accreditation or approval. The accrediting entity may grant such permission only if the agency or person demonstrates to the satisfaction of the accrediting entity that the specific deficiencies that led to the cancellation or refusal to renew have been corrected.

(d) If the accrediting entity grants the agency or person permission to reapply,

the agency or person may file an application with that accrediting entity in accordance with subpart D of this part.

§ 96.79 Administrative or judicial review of adverse action by the accrediting entity.

(a) There is no administrative review of an adverse action by an accrediting entity.

(b) Section 202(c)(3) of the IAA (Pub. L. 106–279, § 202(c)(3), 42 U.S.C. 14922(c)(3)) provides for judicial review of adverse actions by an accrediting entity. Adverse actions are only those actions listed in § 96.75. There is no judicial review of an accrediting entity's decision to deny accreditation or approval, including:

(1) A denial of an initial application;

(2) A denial of an application made after cancellation or refusal to renew by the accrediting entity; and

(3) A denial of an application made after cancellation or debarment by the Secretary.

(c) In accordance with section 202(c)(3) of the IAA (Pub. L. 106–279, § 202(c)(3), 42 U.S.C. 14922(c)(3)), an accredited agency or approved person that is the subject of an adverse action by an accrediting entity may petition the United States district court in the judicial district in which the agency is located or the person resides to set aside the adverse action imposed by the accrediting entity. The United States district court may review the adverse action in accordance with 5 U.S.C. 706. When an accredited agency or approved person petitions a United States district court to review the adverse action of an accrediting entity, the accrediting entity will be considered an agency as defined in 5 U.S.C. 701 for the purpose of judicial review of the adverse action.

§ 96.80 [Reserved]

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. Temporary accreditation is governed by the provisions in subpart N of this part. Unless otherwise provided in subpart N of this part, the provisions in subpart L of this part do not apply to temporarily accredited agencies.

§ 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 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 the action directed by the Secretary.

(b) The Secretary may suspend or cancel the accreditation or approval granted by an accrediting entity if the Secretary finds that such action:

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

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

(3) Will protect the interests of children.

(c) If the Secretary suspends or cancels the accreditation or approval of an agency or person, the Secretary will take appropriate steps to notify both the accrediting entity and the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.84 Reinstatement of accreditation or approval after suspension or cancellation by the Secretary.

An agency or person may petition the Secretary for relief from the Secretary's suspension or cancellation of its accreditation or approval. If the Secretary is satisfied that the deficiencies or circumstances that led to the suspension or cancellation have been corrected or are no longer applicable, 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 notify the Permanent Bureau of the Hague Conference on Private International Law of the reinstatement.

§ 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. A debarment of an accredited agency or approved person will automatically result in the cancellation of accreditation or approval by the Secretary, and the accrediting entity shall deny any pending request for renewal of accreditation or approval.

(b) The Secretary may issue a debarment order only if:

(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 or 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, "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.

§ 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.

§ 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 Convention cases. In the case of suspension, it must consult with the accrediting entity about whether to transfer its Convention adoption cases and adoption records. In the case of cancellation, it must, under the oversight of the accrediting entity, transfer its Convention adoption cases and adoption records to other accredited agencies, approved persons, or a State archive, as appropriate. When the agency or person is unable to transfer such Convention cases or adoption records, the accrediting entity must, after consultation with the Secretary, take appropriate action to assist the agency or person in transferring its Convention cases and adoption records.

§ 96.88 Review of suspension, cancellation, or debarment by the Secretary.

(a) There is no administrative review of an action by the Secretary.

(b) Section 204(d) of the IAA (Pub. L. 106–279, § 204(d), 42 U.S.C. 14924(d)) provides for judicial review of final actions by the Secretary. 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 (Pub. L. 106–279, § 204(d), 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.

§ 96.89 [Reserved]

Subpart M—Dissemination and Reporting of Information by Accrediting Entities

§ 96.90 Scope.

The provisions in this subpart govern the dissemination and reporting of information on accredited agencies and approved persons by accrediting entities. Temporary accreditation is governed by the provisions in subpart N of this part and, as provided for in § 96.110, reports on temporarily accredited agencies must comply with subpart M of this part.

§ 96.91 Dissemination of information to the public about accreditation and approval status.

(a) Once the Convention has entered into force for the United States, the accrediting entity must maintain and make the following information available to the public on a quarterly basis:

(1) The name, address, and contact information for each agency and person it has accredited or approved;

(2) The names of agencies and persons to which it has denied accreditation or approval that have not subsequently been accredited or approved;

(3) The names of agencies and persons that have been subject to withdrawal of temporary accreditation, suspension, cancellation, refusal to renew accreditation or approval, or debarment by the 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) Once the Convention has entered into force for the United States, 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;

(2) A summary of the accreditation or approval study of an agency or person, in a format approved by the Secretary; and

(3) If an agency or person has been subject to withdrawal of temporary accreditation, suspension, cancellation, refusal to renew accreditation or approval, or debarment, a brief statement of the reasons for the action.

§ 96.92 Dissemination of information to the public about complaints against accredited agencies and approved persons.

Once the Convention has entered into force for the United States, 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) The accrediting entity must verify, upon inquiry from a member of the public, whether a complaint was received against an accredited agency or approved person and, if so, provide information about the status of the complaint, including whether it was found to be substantiated or not;

(b) The accrediting entity must have procedures for disclosing information about complaints that are substantiated and those that are not substantiated.

§ 96.93 Reports to the Secretary about accredited agencies and approved persons and their activities.

(a) The accrediting entity must make annual reports to the Secretary on the information it collects from accredited agencies and approved persons pursuant to § 96.43. The accrediting entity must make quarterly reports to the Secretary that summarize for the entire quarter the following information:

(1) The accreditation and approval status of applicants, accredited agencies, and approved persons;

(2) Any instances where it has denied accreditation or approval;

(3) Any adverse actions taken against an accredited agency or approved person and any withdrawals of temporary accreditation;

(4) All substantiated complaints against 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 investigations carried out by the accrediting entity as well as the shortest, longest, average, and median length of time expended to complete complaint investigations; and

(6) Any discernible patterns in complaints received about specific agencies or persons, as well as any discernible patterns of complaints in the aggregate.

(b) The accrediting entity must report to the Secretary within thirty days of the time it learns that an accredited agency or approved person:

(1) Has ceased to provide adoption services; or

(2) Has transferred its Convention cases and adoption records.

(c) In addition to the reporting requirements contained in § 96.72, an

accrediting entity must immediately notify the Secretary in writing:

(1) When it accredits an agency or approves a person;

(2) When it renews the accreditation or approval of an agency or person;

(3) When it takes an adverse action against an accredited agency or approved person that impacts its accreditation or approval status or withdraws an agency's temporary accreditation.

§ 96.94 [Reserved]

Subpart N—Procedures and Standards Relating to Temporary Accreditation

§ 96.95 Scope.

(a) The provisions in subpart N of this part govern only temporary accreditation. The provisions in subpart F of this part cover full accreditation of agencies and approval of persons.

(b) Agencies that meet the eligibility requirements in this subpart may apply for temporary accreditation which will run for a one- or two-year period following the Convention's entry into force for the United States. Persons may not be temporarily approved.

Temporary accreditation is only available to agencies that apply by the transitional application deadline and who complete the temporary accreditation process by the deadline for initial accreditation or approval in accordance with § 96.19.

§ 96.96 Eligibility requirements for temporary accreditation.

(a) An accrediting entity may not temporarily accredit an agency unless the agency demonstrates to the satisfaction of the accrediting entity that:

(1) It has provided adoption services in fewer than 100 intercountry adoption cases in the calendar year preceding the year in which the transitional application deadline falls. For purposes of subpart N of this part, the number of cases includes all intercountry adoption cases that were handled by, or under the responsibility of, the agency, regardless of whether they involved countries party to the Convention;

(2) It qualifies for non-profit tax treatment under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or for non-profit status under the law of any State;

(3) It is properly licensed under State law to provide adoption services in at least one State. It is, and for the last three years prior to the transitional application deadline has been, providing intercountry adoption services;

(4) It has the capacity to maintain and provide to the accrediting entity and the Secretary, within thirty days of request, all of the information relevant to the Secretary's reporting requirements under section 104 of the IAA (Pub. L. 106-279, section 104, 42 U.S.C. 14914); and

(5) It has not been involved in any improper conduct related to the provision of intercountry adoption or other services, as evidenced in part by the following:

(i) The agency has maintained its State license without suspension or cancellation for misconduct during the entire period in which it has provided intercountry adoption services;

(ii) The agency has not been subject to a finding of fault or liability in any administrative or judicial action in the three years preceding the transitional application deadline; and

(iii) The agency has not been the subject of any criminal findings of fraud or financial misconduct in the three years preceding the transitional application deadline.

(b) An accrediting entity may not temporarily accredit an agency unless the agency also demonstrates to the satisfaction of the accrediting entity that it has a comprehensive plan for applying for and achieving full accreditation before the agency's temporary accreditation expires, and is taking steps to execute that plan.

§ 96.97 Application procedures for temporary accreditation.

(a) An agency seeking temporary accreditation must submit an application to an accrediting entity with jurisdiction over its application, with the required fee(s), by the transitional application deadline established pursuant to § 96.19. Applications for temporary accreditation that are filed after the transitional application deadline will not be considered.

(b) An agency may not seek temporary accreditation and full accreditation at the same time. The agency's application must clearly state whether it is seeking temporary accreditation or full accreditation. An eligible agency's option of applying for temporary accreditation will be deemed to have been waived if the agency also submits a separate application for full accreditation prior to the transitional application deadline. The agency may apply to only one accrediting entity at a time.

(c) The accrediting entity must establish and follow uniform application procedures and must make information about these procedures available to agencies that are

considering whether to apply for temporary accreditation. The accrediting entity must evaluate the applicant for temporary accreditation in a timely fashion. The accrediting entity must use its best efforts to provide a reasonable opportunity for an agency that applies for temporary accreditation by the transitional application deadline to complete the temporary accreditation process by the deadline for initial accreditation or approval. If an agency seeks temporary accreditation under subpart N of this part, it will be included on the initial list deposited by the Secretary with the Permanent Bureau of the Hague Conference on Private International Law only if it is granted temporary accreditation by the deadline for initial accreditation or approval established pursuant to § 96.19(a).

§ 96.98 Length of temporary accreditation period.

(a) *One-year temporary accreditation.* An agency that has provided adoption services in 50–99 intercountry adoptions in the calendar year preceding the year in which the transitional application deadline falls may apply for a one-year period of temporary accreditation. The one-year period will commence on the date that the Convention enters into force for the United States.

(b) *Two-year temporary accreditation.* An agency that has provided adoption services in fewer than 50 intercountry adoptions in the calendar year preceding the year in which the transitional application deadline falls may apply for a two-year period of temporary accreditation. The two-year period will commence on the date that the Convention enters into force for the United States.

§ 96.99 Converting an application for temporary accreditation to an application for full accreditation.

(a) The accrediting entity may, in its discretion, permit an agency that has applied for temporary accreditation to convert its application to an application for full accreditation, subject to submission of any additional required documentation, information, and fee(s). The accrediting entity may grant a request for conversion if the accrediting entity has determined that the applicant is not in fact eligible for temporary accreditation based on the number of adoption cases it has handled; if the agency has concluded that it can complete the full accreditation process sooner than expected; or for any other reason that the accrediting entity deems appropriate.

(b) If an application is converted, it will be treated as an application filed after the transitional application deadline, and the agency may not necessarily be provided an opportunity to complete the accreditation process in time to be included on the initial list of accredited agencies and approved persons that the Secretary will deposit with the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.100 Procedures for evaluating applicants for temporary accreditation.

(a) To evaluate an agency for temporary accreditation, the accrediting entity must:

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

(2) Verify the information provided by the agency, as appropriate. The accrediting entity may also request additional documentation and information from the agency in support of the application as it deems necessary.

(b) The accrediting entity may also decide, in its discretion, that it must conduct a site visit to determine whether to approve the application for temporary accreditation. The site visit may include interviews with birth parents, adoptive parent(s), prospective adoptive parent(s), and adult adoptee(s) served by the agency, interviews with the agency's employees, and interviews with other individual(s) knowledgeable about its provision of adoption services. It may also include a review of on-site documents. The accrediting entity must, to the extent possible, advise the agency or person in advance of documents it wishes to review during the site visit. The provisions of §§ 96.25 and 96.26 will govern requests for and use of information.

(c) Before deciding whether to grant temporary accreditation to the agency, the accrediting entity may, in its discretion, advise the agency of any deficiencies that may hinder or prevent its temporary accreditation and defer a decision to allow the agency to correct the deficiencies.

(d) The accrediting entity may only use the criteria contained in § 96.96 when determining whether an agency is eligible for temporary accreditation.

(e) The eligibility criteria contained in § 96.96 and the standards contained in § 96.104 do not eliminate the need for an agency to comply fully with the laws of the jurisdictions in which it operates. An agency must provide adoption services in Convention cases consistent with the laws of any State in which it operates and with the Convention and the IAA.

§ 96.101 Notification of temporary accreditation decisions.

(a) The accrediting entity must notify agencies of its temporary accreditation decisions on the uniform notification date to be established by the Secretary pursuant to § 96.58(a). On that date, the accrediting entity must inform each applicant and the Secretary in writing whether the agency has been granted temporary accreditation. The accrediting entity may not provide any information about its temporary accreditation decisions to any agency or to the public until the uniform notification date. If the Secretary requests information on the interim or final status of an agency prior to the uniform notification date, the accrediting entity must provide such information to the Secretary.

(b) Notwithstanding paragraph (a) of this section, the accrediting entity may, in its discretion, communicate with agencies about the status of their pending applications for temporary accreditation for the sole purpose of affording them an opportunity to correct deficiencies that may hinder their temporary accreditation. When informed by an accrediting entity that an agency has been temporarily accredited, the Secretary will take appropriate steps to ensure that relevant information about the temporarily accredited agency is provided to the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.102 Review of temporary accreditation decisions.

There is no administrative or judicial review of an accrediting entity's decision to deny temporary accreditation.

§ 96.103 Oversight by accrediting entities.

(a) The accrediting entity must oversee an agency that it has temporarily accredited by monitoring whether the agency is in substantial compliance with the standards contained in § 96.104 and through the process of assessing the agency's application for full accreditation when it is filed. The accrediting entity must also investigate any complaints or other information that becomes available to it about an agency it has temporarily accredited. Complaints against a temporarily accredited agency must be handled in accordance with subpart J of this part. For purposes of subpart J of this part, the temporarily accredited agency will be treated as if it were a fully accredited agency, except that:

(1) The relevant standards will be those contained in § 96.104 rather than

those contained in subpart F of this part; and

(2) Enforcement action against the agency will be taken in accordance with § 96.105 and § 96.107 rather than in accordance with subpart K of this part.

(b) The accrediting entity may determine, at its discretion, that it must conduct a site visit to investigate a complaint or other information or otherwise monitor the agency. In such a case, the accrediting entity may assess additional fees for actual costs incurred for travel and maintenance of evaluators and for any additional administrative costs to the accrediting entity.

(c) The accrediting entity may consider any information that becomes available to it about the compliance of the agency. The provisions of §§ 96.25 and 96.26 govern requests for and use of information.

§ 96.104 Performance standards for temporary accreditation.

The accrediting entity may not maintain an agency's temporary accreditation unless the agency demonstrates to the satisfaction of the accrediting entity that it is in substantial compliance with the following standards:

(a) The agency follows applicable licensing and regulatory requirements in all jurisdictions in which it provides adoption services;

(b) It does not engage in any improper conduct related to the provision of intercountry adoption services, as evidenced in part by the following:

(1) It maintains its State license without suspension or cancellation for misconduct;

(2) It is not subject to a finding of fault or liability in any administrative or judicial action; and

(3) It is not the subject of any criminal findings of fraud or financial misconduct;

(c) It adheres to the standards in § 96.36 prohibiting child buying;

(d) It adheres to the standards for responding to complaints in accordance with § 96.41;

(e) It adheres to the standards on adoption records and information relating to Convention cases in accordance with § 96.42;

(f) It adheres to the standards on providing data to the accrediting entity in accordance with § 96.43;

(g) When acting as the primary provider in a Convention adoption and using supervised providers in the United States or in another Convention country, it complies with the standards in §§ 96.44, 96.45 and 96.46;

(h) When performing or approving a home study in an incoming Convention

case, it complies with the standards in § 96.47;

(i) When performing or approving a child background study or obtaining consents in an outgoing Convention case, it complies with the standards in § 96.53;

(j) When performing Hague Convention functions in incoming or outgoing cases, it complies with the standards in § 96.52 or § 96.55;

(k) It has a plan to transfer its cases and adoption records if it ceases to provide or is no longer permitted to provide adoption services in Convention cases;

(l) The agency is making continual progress towards completing the process of obtaining full accreditation by the time its temporary accreditation expires; and

(m) The agency or person takes all necessary and appropriate measures to perform any tasks in a Convention adoption case that the Secretary identifies are required to comply with the Convention, the IAA, or any regulations implementing the IAA.

§ 96.105 Adverse action against a temporarily accredited agency by an accrediting entity.

(a) If at any time the accrediting entity determines that an agency it has temporarily accredited is substantially out of compliance with the standards in § 96.104, it may, in its discretion, withdraw the agency's temporary accreditation. The accrediting entity must notify the agency in writing of any decision to withdraw the agency's temporary accreditation. The written notice must identify the deficiencies necessitating the withdrawal. Before withdrawing the agency's temporary accreditation, the accrediting entity may, in its discretion, provide the agency with an opportunity to correct the deficiencies warranting withdrawal.

(b) The provisions of §§ 96.25 and 96.26 govern requests for and use of information.

(c) The accrediting entity must immediately notify the Secretary in writing when it withdraws an agency's temporary accreditation.

§ 96.106 Review of the withdrawal of temporary accreditation by an accrediting entity.

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

(b) Withdrawal of temporary accreditation is analogous to cancellation of accreditation and is therefore an adverse action pursuant to § 96.75. In accordance with section

202(c)(3) of the IAA (Pub. L. 106-279, section 202(c)(3), 42 U.S.C. 14922(c)(3)), a temporarily accredited agency that is the subject of an adverse action by an accrediting entity may petition the United States district court in the judicial district in which the agency is located or the person resides to set aside the adverse action imposed by the accrediting entity. The United States district court may review the adverse action in accordance with 5 U.S.C. 706. When an accredited agency petitions a United States district court to review the adverse action of an accrediting entity, the accrediting entity will be considered an agency as defined in 5 U.S.C. 701 for the purpose of judicial review of the adverse action.

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

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

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

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

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

(3) Will protect the interests of children.

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

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

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

(b) Section 204(d) of the IAA (Pub. L. 106-279, section 204(d), 42 U.S.C. 14924(d)) provides for judicial review of final actions by the Secretary. Withdrawal of temporary accreditation, which is analogous to cancellation of accreditation, is a final action subject to judicial review.

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

IAA (Pub. L. 106-279, 204(d), 42 U.S.C. 14924(d)).

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

(a) If an agency's temporary accreditation is withdrawn, it must cease to provide adoption services in all Convention cases and must, under the oversight of the accrediting entity, transfer its Convention adoption cases and adoption records to other accredited agencies, approved persons, or a State archive, as appropriate.

(b) Where the agency is unable to transfer such Convention cases or adoption records, the accrediting entity must, after consultation with the Secretary, take appropriate action to assist the agency in transferring its Convention cases and adoption records.

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

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

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

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

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

§ 96.111 Fees charged for temporary accreditation.

(a) Any fees charged by an accrediting entity for temporary accreditation will include a non-refundable fee for temporary accreditation set forth in a schedule of fees approved by the Secretary as provided in § 96.8(a). Such fees may not exceed the costs of

temporary accreditation and must include all the costs of all activities associated with the temporary accreditation cycle (including, but not limited to, costs for completing the temporary accreditation process, complaint review and investigation, routine oversight and enforcement, and other data collection and reporting activities). The temporary accreditation fee may not include the costs of site visit(s). The schedule of fees may provide, however, that, in the event that a site visit is required to determine whether to approve an application for temporary accreditation, to investigate a complaint or other information, or otherwise to monitor the agency, the accrediting entity may assess additional fees for actual costs incurred for travel and maintenance of evaluators and for any additional administrative costs to the accrediting entity.

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

Dated: August 27, 2003.

Richard Armitage,

Deputy Secretary of State, Department of State.

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DEPARTMENT OF STATE

22 CFR Part 98

RIN 1400-AB-69

[Public Notice 4467]

Intercountry Adoption—Preservation of Convention Records

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State (the Department) is proposing new regulations to implement the records preservation requirements of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA). The IAA requires that the Department issue rules to govern the preservation of Convention records held by the Department and the Department of Homeland Security (DHS). These proposed rules require the Department

and DHS to maintain Convention records for 75 years.

DATES: Written or electronic comments must reach the Department on or before November 14, 2003.

ADDRESSES: Commenters may send hard copy submissions or comments in electronic format. Commenters sending only hard copies must send an original and two copies referencing docket number State/AR-01/98 to: U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, SA-29, 2201 C Street NW., Washington, DC 20520. Hard copy comments may also be sent by overnight courier services to: U.S. Department of State, CA/OCS/PRI, Adoption Regulations Docket Room, 2201 C Street NW., Washington DC 20520. Do not personally hand deliver comments to the Department of State.

Comments referencing the docket number State/AR-01/98 may be submitted electronically to adoptionregs@state.gov. Two hard copies of the comments submitted electronically must be mailed under separate cover as well. The electronic comments or the hard copy comments must be received by the date noted above in the date section of this proposed rule. Comments must be made in the text of the message or submitted as a Word file avoiding the use of any form of encryption or use of special characters. If you submit comments by hard copy rather than electronically, include a disk with the submission if possible. Hard copy submissions without an accompanying disk file, however, will be accepted.

FOR FURTHER INFORMATION CONTACT: For further information on submitting comments on the regulations, contact Anna Mary Coburn or Edward Betancourt at 202-647-2826. Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: As noted, comments may be submitted electronically to: adoptionregs@state.gov. Public comments and supporting materials are available for viewing at the Adoption Regulations Docket Room. To review docket materials, members of the public must make an appointment by calling Delilia Gibson-Martin at 202-647-2826. The public may copy a maximum of 100 pages at no charge. Additional copies cost \$0.25 a page. The Department of State will keep the official record for this action in paper form. Accordingly, the official administrative file is the