

**DEPARTMENT OF STATE****22 CFR Part 96****[Public Notice: 9521]****RIN 1400–AD91****Intercountry Adoptions****AGENCY:** Department of State.**ACTION:** Proposed rule.

**SUMMARY:** The Department of State (the Department) proposes to amend requirements for accreditation of agencies and approval of persons to provide adoption services in intercountry adoption cases. The proposed rule includes a new subpart establishing parameters for U.S. accrediting entities to authorize adoption service providers who have received accreditation or approval to provide adoption services in countries designated by the Secretary, which will be known as “country-specific authorization” (CSA). Adoption service providers will only be permitted to act as primary providers in a CSA-designated country if they have received CSA for that particular country. The proposed rule also strengthens certain standards for accreditation and approval, including those related to fees and the use of foreign providers. In addition, the proposed rule enhances standards related to preparation of prospective adoptive parents so that they receive more training related to the most common challenges faced by adoptive families, and are better prepared for the needs of the specific child they are adopting. These proposed changes are intended to align the preparation of prospective adoptive parents with the current demographics of children immigrating to the United States through intercountry adoption. Finally, the proposed rule makes the mechanism to submit complaints about adoption service providers available to complainants even if they have not first addressed their complaint directly with the adoption service provider.

**DATES:** The Department will accept comments on the proposed regulation up to November 7, 2016.

**ADDRESSES:**

- *Internet:* You may view this proposed rule and submit your comments by visiting the *Regulations.gov* Web site at [www.regulations.gov](http://www.regulations.gov), and searching for docket number DOS–2016–0056.

- *Mail or Delivery:* You may send your paper, disk, or CD-ROM submissions to the following address: Comments on Proposed Rule 22 CFR part 96, Office of Legal Affairs, Overseas

Citizens Services, U.S. Department of State, CA/OCS/L, SA–17, Floor 10, Washington, DC 20522–1710.

- All comments should include the commenter’s name and the organization the commenter represents (if applicable). If the Department is unable to read your comment for any reason, the Department might not be able to consider your comment. Please be advised that all comments will be considered public comments and might be viewed by other commenters; therefore, do not include any information you would not wish to be made public. After the conclusion of the comment period, the Secretary will publish a final rule as expeditiously as possible in which it will address relevant public comments.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****Why is the Secretary promulgating this rule?**

On February 15, 2006, the Secretary published the final rule, 71 FR 8064, on the accreditation and approval of agencies and persons in accordance with 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, (IAA), Public Law 106–279 (42 U.S.C. Chapter 143). The Convention and the law implementing it generally require the accreditation of agencies (private, non-profit organizations licensed to provide adoption services in at least one State) and the approval of persons (individuals and private, for-profit entities) to provide adoption services in Convention cases. The Secretary revised these regulations with a final rule published on February 10, 2015 (80 FR 7321), to reflect the requirements of the IAA as amended by the Intercountry Adoption Universal Accreditation Act of 2012, (UAA), (Pub. L. 112–276). The Act requires that the accreditation standards developed in accordance with the Convention and the IAA, which previously only applied in Convention adoption cases, apply also in non-Convention adoption cases, known as “orphan” cases, based on the definition of “orphan” in section 101(b)(1)(F) of the Immigration and Nationality Act (INA) (8 U.S.C. 1101(b)(1)(F)). The changes proposed in this rule derive from the Secretary’s authority to promulgate regulations that prescribe the standards and procedures for the

accreditation of agencies and the approval of persons under section 203(a)(1) of the IAA (42 U.S.C. 14923(a)(1)). Among these changes in the proposed rule, we are reinserting a definition of “central authority function.” This term had been defined in the IAA, but was deleted from the regulations when we revised them in order to implement the UAA. The definition now proposed has been redrafted to include the duties carried out by a Central Authority or equivalent functions completed by a competent authority in non-Convention countries.

The Secretary also revised these regulations with a final rule published on August 19, 2015 (80 FR 50195). That rule revised the accreditation regulations relating to application for renewal of accreditation found in subpart G of 22 CFR part 96, and authorizes an accrediting entity to stagger renewals and establishes criteria for selecting which agencies or persons are eligible for an extension of accreditation or approval for up to one year.

**Overview of Proposed Changes to the Accreditation Regulations****A. Country-Specific Authorization (CSA)**

The Department makes every effort to secure and support intercountry adoption between the United States and foreign countries as a viable option for children in need of permanent homes. There may be instances in which the Secretary, in consultation with the Secretary of Homeland Security, would deem it necessary and beneficial to designate one or more countries for which adoption service providers (ASPs) would have to obtain CSA in order to act as a primary provider with respect to adoptions from that country. The requirement for country-specific authorization in addition to accreditation or approval would be designed to enhance existing protections in the intercountry adoption process. The following examples illustrate how CSA could be employed:

**Documenting Compensation and Certain Fees**

The revisions to 22 CFR 96.34 would only allow ASPs to compensate its employees, supervised providers, and foreign providers, or any other individual or entity involved in intercountry adoption, amounts that are “not unreasonably high in relation to the services actually rendered,” as opposed to the previous standard which also said that such compensation would be in relation to “norms for

compensation within the intercountry adoption community in that country, to the extent that such norms are known to the accrediting entity.” Under this revised standard, the Department could determine the ranges of compensation that are reasonable for adoption-related services in specific countries.

CSA would further enhance compliance with this standard, as revised in this proposed rule, by re-weighting this standard in a particular CSA-designated country, from “foundational” to “mandatory,” so that ASPs would have to demonstrate full compliance with the relevant range of compensation for that country in 100 percent of cases. In addition, the standard in 22 CFR 96.40, requiring the itemization of expected fees and estimated expenses in the Country of Origin (COO), could be weighted more heavily in order to maintain substantial compliance with CSA. The Department could also require additional evidence from adoption service providers that the amount of money they require prospective adoptive parents to provide as support to orphanages or child-welfare centers in a foreign country is not unreasonably high for that particular country, for the purposes of 22 CFR 96.40(f). Requiring additional evidence as to what constitutes unreasonably high amounts would further prevent payments to orphanages or child-welfare centers from being used as inducement to place a child for adoption with a specific provider or parent.

#### Obtaining Medical and Social Information About the Child

In a Country of Origin (COO) in which the Department has concerns that reliable medical or social information about children eligible for adoption is not widely available, the Department, through CSA, may require additional evidence with regard to what constitutes reasonable efforts to obtain the child’s medical information (22 CFR 96.49(d)) and social information (22 CFR 96.49(g)). Requiring additional evidence regarding what steps have been taken to obtain the information would help create a more consistent standard within a particular country. This may be especially important if there are divergent interpretations among adoption service providers as to what constitutes reasonable efforts to obtain certain information about a child placed for adoption or as to what information is, in fact, “available.”

Each CSA designation would be tailored to the conditions in a specific country of origin, and might combine any of the above examples, along with

other similar protections tailored to the conditions in a specific country. Each CSA designation would be designed to bolster confidence in adoption service providers’ activities with regard to that particular country such that CSA may also allow for the initiation or continuation of intercountry adoption where it might otherwise not be possible.

Article 12 of the Convention provides: “A body accredited in one Contracting state [what U.S. authorities call an accredited agency or approved person] may act in another Contracting state only if the competent authorities of both states have authorised [sic] it to do so.” Authorities in countries of origin have their own procedures for providing authorization to accredited bodies from other countries, including to U.S. agencies and persons to provide adoption-related services within their country. To better reflect and address the practices that have evolved in recent years, we have added to § 96.12 a provision that would require U.S. adoption service providers to maintain authorization received from the foreign country, if required by that country, in order to be able to provide services related to intercountry adoptions in cases involving that country. Currently, in the United States, agencies or persons that are accredited or approved pursuant to section 201 of the IAA are considered to be authorized by the United States to act in intercountry adoption cases in every foreign country. The United States would continue this practice of considering accredited agencies or approved persons to be authorized to provide adoption services related to intercountry adoptions generally. However, the proposed rule would require that, only in specific countries designated by the Secretary, in consultation with the Secretary of Homeland Security, accredited agencies or approved persons must also obtain country specific-authorization in order to act as a primary provider with respect to intercountry adoption in the designated country.

Under Title Two of the IAA, section 203, the Secretary, by regulation, prescribes the standards and procedures to be used by accrediting entities for the accreditation of agencies and the approval of persons. An accrediting entity, when evaluating an agency’s or person’s eligibility for accreditation or approval, evaluates an agency’s or person’s compliance with applicable standards in 22 CFR part 96 subpart F. Once accredited or approved, an agency or person may offer or provide adoption services in cases involving any foreign country to the extent permitted by the

foreign country. For each country for which CSA would be required, the Secretary, in consultation with the Secretary of Homeland Security, would propose to set forth, in a public announcement, a country specific method of determining substantial compliance with one or more of the standards in subpart F. That method may include increasing the “weight” assigned to one or more particular standards, and may include additional or specified evidence that the adoption service provider will need to provide to demonstrate compliance with those standards. To obtain country-specific authorization for a particular CSA-designated country, an accredited or approved adoption service provider would need to demonstrate substantial compliance with the country specific criteria for that country. The accrediting entity, as proposed here, would evaluate the authorized agency’s or person’s substantial compliance with the accreditation and approval standards based on requirements to provide additional or specified evidence or comply with a more heavily weighted standard that has been tailored to a specific country.

The Department proposes the creation of a new subpart N of 22 CFR part 96 to implement CSA. The procedures outlined in the new subpart N are based on the existing accreditation and approval procedures and requirements in 22 CFR part 96. The new subpart N would address the scope of CSA; application procedures, the length of CSA, renewal of CSA; the denial of CSA and a review of decisions of denial; complaints relating to compliance with CSA, their review by the accrediting entity, and possible referral to the Secretary or other authorities; and the decision by the accrediting entity to take CSA-related adverse actions. The standards governing accreditation, renewal of accreditation, and CSA would be the same; however, CSA may require ASPs to meet more heavily weighted standards, or show additional or specified evidence with regard to compliance with a standard.

Complaints received related to CSA of an adoption service provider would be submitted through the complaint registry and may be handled as other complaints are handled. Provisions in § 96.101(b) would, however, require the accrediting entity to verify whether complainants had attempted to resolve the complaints through the provider’s established internal complaint procedures and if not, allow the accrediting entity to refer the complaints to the provider for resolution. Providing the accrediting

entity with discretion to refer such complaints first to the adoption service provider allows the accrediting entity the flexibility to determine if there are sufficient reasons not to do so, such as concerns expressed by adoptive parents still in the adoption process that an adoption service provider might retaliate against them or their child, and concerns that complaints indicating potentially illegal activities are best brought to the attention of the accrediting entity immediately. (A provision in § 96.69 discussed in part D., below, is similarly justified.)

The date of expiration for CSA ordinarily would coincide with the date of expiration of the accreditation or approval cycle of the specific ASP. CSA would be granted for no less than three and no more than five years.

The proposed rule would also amend sections in part 96 to include CSA-related functions as part of an accrediting entity's accreditation and approval duties. The Department proposes to add additional definitions, explanatory language, and references to CSA, where necessary.

#### *B. Provision of Adoption Services and Fee Disclosures*

The proposed rule would amend part 96 to strengthen certain accreditation and approval standards, including those related to fee disclosures, and those related to the use of foreign providers. Such changes would further strengthen the provision of adoption services. These changes derive from observations and experience about the practical operation of the accreditation and approval regulations in the seven years since the regulations became effective. The proposed rule would incorporate language contained in the definitions section of the IAA, at proposed § 96.2 (Definitions, Adoption Services), in order to make explicit that "provision" of an adoption service includes "facilitating" the adoption service. For services that are subject to verification and do not require supervision as outlined in § 96.14(c)(3), the Department further proposes to limit an agency's or person's use of foreign providers to situations in which a primary provider has not previously worked with the foreign provider in the current or previous accreditation cycle, or where the primary provider has not accepted the case as part of a transfer plan in § 96.33(f).

To increase transparency and provide the accrediting entity with an effective tool for assessing an agency's or person's compliance with the prohibition on child buying as articulated in § 96.36, addition of

provisions in § 96.36(b)(1) and (2) would have the ASP document foreign financial transactions in a way that maintains a reviewable record of what expenditures were paid and for what purposes.

The proposed rule in § 96.40 also would require agencies or persons, when disclosing fees to prospective adoptive parents, to distinguish fees in the United States from those in a foreign country. In addition, as a provision in § 96.40(j) preserving consumer protections for prospective adoptive parents who may not realize the risk of waiving their approval, the proposed revisions delete previous provisions allowing adoption service providers to obtain a waiver from prospective adoptive parents such that the providers need not seek prospective adoptive parents' specific consent for expending funds in excess of \$1,000. This requirement would better encourage providers to disclose all known fees ahead of time and make it easier for prospective adoptive parents to compare fees between agencies and persons. Requiring additional itemization and distinction between fees and expenses in the United States and fees and expenses abroad would make it easier for prospective adoptive parents to compare the costs for services and provide greater transparency as to how the agency spends that money. The proposed revisions would create greater transparency with respect to the expenditure of money in intercountry adoptions.

Finally, the proposed rule revisions in § 96.40(f) aim to prohibit accredited agencies or approved persons from charging prospective adoptive parents to care for a child prior to completion of the intercountry adoption process. In recent years, accredited agencies and approved persons have begun charging prospective adoptive parents monthly support fees for children where the intercountry adoption process is not complete. In some cases, these fees are significantly higher than the normal costs associated with the care of children in the foreign country. Where institutions can collect large fees for the care of a particular child, an incentive may be created to recruit children into institutions, while also providing a disincentive for expeditious processing of an adoption. These practices substantially increase the costs of adoption for prospective adoptive parents, and may result in a situation where an adoptive family pays for long-term care of a child who is not in fact eligible for intercountry adoption.

#### *C. Accreditation and Approval Standards Related to Training and Preparation of Prospective Adoptive Parents*

The Department proposes to create significant changes aimed at improving the level of preparedness of prospective adoptive parents and increasing the chances of successful and permanent adoption through the intercountry process. Increased training requirements for prospective adoptive parents may better prepare them to help their child, recently adopted through the intercountry adoption process, adjust to a new environment. The profile of many of the children currently eligible for intercountry adoption is dramatically different from the profile of children at the time when the regulations were initially published in 2006. At that time, the majority of children adopted through intercountry adoption were healthy infants or very young children. The demographics of children adopted through intercountry adoption now include a higher percentage of older children, children with special needs, and sibling groups. The proposed rule, therefore, would align intercountry adoption training requirements with the training requirements for those who wish to adopt through the child welfare systems of the various U.S. States which have long recognized the training needed for older children, sibling groups, and children with medical or other needs. Prospective adoptive parents would complete the requirements for their State of residence, information about which is available through the Department of Health and Human Service's National Resource Center for Diligent Recruitment, <http://www.nrcdr.org/assets/files/NRCDR-org/type-of-training-by-state.pdf>, or an equivalent.

Proposed changes to 22 CFR 96.48 to 96.50 would include updated requirements related to training and preparation of prospective adoptive parents for accredited agencies and approved persons; these proposed changes seek to promote permanent placement and contribute to the prevention of disruptions of placements and dissolutions of adoptions, as well as unregulated custody transfer (also referred to as "rehoming"). The pre-adoption preparation and training that accredited agencies and approved persons provide to parents pursuing intercountry adoption would increase the minimum number of hours required and expand the issues that must be addressed. Our proposed change is based on the consistent feedback from the adoption and child welfare

community that increased training improves outcomes. The Department requests comments on the effectiveness of training and the optimal number of hours of training.

The pre-adoption preparation and training regulations already include the intercountry adoption process, characteristics and needs of waiting children, and in-country conditions that affect the children; genetic, health, emotional and development risk factors; the impact of leaving familiar ties and of institutionalization on children; attachment disorders; the laws and adoption process in the country of origin; implications of becoming a multicultural family; post-placement and post-adoption reporting requirements; the child's history and background; health risks in the child's country of origin; and child-specific information based on available social, medical, and other background on the child. The proposed regulatory changes pertaining to the preparation and training of prospective adoption parents would require specific methods of presentation and include, in addition to existing training topics, training on grief, loss, identity, and trauma; characteristics of successful intercountry adoptive placements; exploration of the family's individual circumstances, including past disruptions and dissolutions and previous compliance with post-placement and post-adoption reporting requirements. To directly address growing concerns about disruption, dissolution, and unregulated custody transfer, the proposed changes would require adoption service providers to include information about disruption and dissolution in training and preparation programs for prospective adoptive parents. Adoption service providers would be required to provide specific points of contact for support in the event an adoptive family faces adjustment or other difficulties that place permanency at risk. In order to provide training that encourages parents to carefully consider their ability to meet the needs of a child adopted through the intercountry adoption process before entering into a contract for adoption services, the provisions in § 96.48(a)(1) would prohibit agencies and persons from making a referral or requiring payment of fees for the specified adoption services prior to completion of certain required training. Currently, an agency can match a child to a family that has not completed its home study and training, which makes it more difficult for the agency to determine whether the family is suitable

for adoption and for a match with a specific child. Also, families that have already paid non-refundable fees may be less likely to self-identify as not suitable for an adoption once they learn more about the challenges an intercountry adoption may present. In accordance with the provisions in § 96.48(c)(1), after prospective adoptive parents are matched with a specific child, agencies or persons would need to discuss that child's specific needs and circumstances and how the family will address them. Agencies or persons would be required to provide prospective adoptive parents with resources and information about how and where to seek post-adoption services and support.

To address similar concerns as they relate to monitoring placements until final adoptions, in the event an adoptive family is in crisis during the post-placement phase, the proposed revisions would add an additional requirement that the ASP takes all appropriate measures to inform the parents of local and State laws and legal resources pertaining to disruption of a placement and appropriate measures for making another placement of a child, as well as providing resources to address potential future crises.

#### *D. Submission of Complaints and Other Proposed Changes*

The proposed rule in subpart J, § 96.69, would no longer require a complainant to first submit her/his complaint to the agency or person that is the subject of a complaint before submitting it to the complaint registry for action by the accrediting entity. Previously, complainants had to attempt to resolve their concerns directly with their provider before seeking a review of the matter by the accrediting entity. This change addresses multiple issues, including concerns expressed by adoptive parents still in the adoption process that an adoption service provider might retaliate against them or their child, and concerns that complaints indicating potentially illegal activities are best brought to the attention of the accrediting entity immediately. Changes in § 96.68 and § 96.70(b)(1) clarify that it is possible to file complaints relating to verification of certain adoption services that may be performed by foreign providers that were not supervised. A final key change found in subpart J is the change of the term "investigate" to "review" with respect to an accrediting entity's review of complaints. This change brings the language into conformity with the IAA. The Department made minor technical edits to §§ 96.70(a), 96.71, and 96.72

that do not have substantive impacts on the requirements.

Amendments to § 96.24(c) proposed here would require an agency or person to provide an appropriate setting for interviews and review of case documents by the accrediting entity when it conducts a site visit. Some provider operations take place in close quarters such as a private home where the ability of the accrediting entity's evaluator to carry out a discussion with employees or others or review documents is hindered. It is essential that an ASP provide a space that would allow the evaluator to carry out such interviews and reviews in order to secure pertinent information about an agency's or person's practices and programs.

Changes to § 96.33(a) would require disclosure of remuneration paid by adoption service providers to foreign providers, making it synonymous with the requirement that they disclose payments to everyone else. Addition of § 96.33(h) would provide a list of potential sources of information that would contribute toward an effective risk assessment as the basis for determining the type and amount of professional, general, directors' and officers', errors and omissions, and other liability insurance for an agency or person to carry.

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

#### *E. Implementing Changes in the Proposed Rule, if Approved*

Some changes in the proposed rule would become effective 30 days after publication of the final rule, consistent with the Administrative Procedures Act (APA), while we envision others taking effect within three to nine months, for all agencies or persons currently accredited or approved and for those seeking accreditation or approval. Provisions in § 96.40 relating to fee disclosures would take effect 30 days after publication. To comply with the new rule, adoption service providers will need to change their fee disclosures. While the information required under the new rule should already be available to accredited or approved adoption service providers, the efforts to reflect the added specificity required by the new rule will require the APA-mandated 30-day period of implementation. Such a time frame would allow adoption service providers to review already available information, determine whether such

fees and expenses should be characterized as fees and expenses in the United States or overseas, respectively, and begin to provide this information to prospective adoptive parents.

The provisions in § 96.2 (definition of adoption services) and § 96.14 relating to supervised providers would take effect 90 days after publication. Ninety days provides sufficient time for the agency or person to appropriately vet, enter into a contractual agreement with, and begin supervising facilitators. The provisions in § 96.48 relating to training and prospective adoptive parent preparation would take effect nine months after the publication of the final rule. The Department recognizes the efforts required from accredited or approved providers to identify available training programs required by the relevant State to adopt a child through the State's child welfare system, or an equivalent if the State program is unavailable, as well as develop new curriculum specific to intercountry adoption. The Department anticipates that provisions allowing the Secretary to designate a country as requiring CSA and the minor other changes will take effect within 30 days of publication of the final rule.

### Regulatory Analysis

#### *Administrative Procedure Act*

The Department is issuing this rule as a proposed rule with a 60-day period for public comments.

#### *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 and provides a factual basis for its certification. “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)).

The Secretary has reviewed this proposed rule's impact on small agencies and persons in accordance with the final regulatory analysis requirements of the RFA. There are currently approximately 200 accredited or approved adoption service providers, many of which are arguably “small entities” under the RFA that would

have to comply with this rulemaking. For the reasons provided below, the Secretary has determined 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 apply to obtain CSA to act as a primary provider in those countries for which the Secretary determines that CSA is required, or to act as supervised providers. Supervised providers are not required to become accredited or approved, nor are they required to obtain CSA, and thus they can largely avoid the economic impact of accreditation and approval and of obtaining CSA whenever they work under the supervision of a primary provider.

Second, certain types of very small providers, specifically home study and child background study preparers, are exempted from the requirement for accreditation, even in CSA countries, because their work is reviewed and approved by an agency that is accredited.

Third, with respect to revisions to accreditation standards in the proposed rule that impact all 200 accredited agencies and approved persons, such as standards relating to disclosure of fees, preparation of prospective adoption parents, and revisions clarifying the role of primary providers, 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 features of the proposed rule minimize the burden on small entities.

The Secretary 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 desire to apply for CSA in countries where the Secretary has determined that CSA is required? (2) What will the cost be to small entities

to comply with the fee disclosure provisions of the proposed rule? (3) What are accrediting entities likely to charge the agencies for the country specific authorization process? (4) What are the estimated costs agencies will have to expend to comply with the standards in Subpart N? It would be helpful if commenters would supply information and data to support their comments on these enumerated issues.

#### *The Small Business Regulatory Enforcement Fairness Act of 1996*

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

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

Section 202 of the Unfunded Mandates Reform Act of 1995 (codified at 2 U.S.C. 1532) generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments or the private sector.

#### *Executive Orders 12372 and 13132: Federalism*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and No. 13132.

#### *Executive Orders 12866 and 13563*

The Secretary has reviewed this proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866, and has determined that the benefits of this proposed regulation justify its costs. The Secretary does not consider this rulemaking to be an economically significant action within the scope of section 3(f)(1) of the

Executive order. The estimated economic impact of implementing key changes in the proposed rule revising the intercountry adoption accreditation regulations is less than \$1,000,000, and well under the \$100 million threshold set by E.O. 12866 as having a significant economic impact. Furthermore, given the relatively low cost to the public, and given the high public benefit provided by the proposed rule in terms of stronger preparations of prospective adoptive parents for a successful intercountry adoption, greater transparency as to adoption fees both in the United States and abroad, and the potential for improving practices in certain countries of origin through country specific authorization that could potentially result in beginning or resuming intercountry adoption in countries of origin, this proposed rule demonstrates both the letter and the spirit of the principles embodied in E.O. 12866.

### 1. Country Specific Authorization (CSA)

*Cost to the Accrediting Entity:* Almost all of the costs associated with implementing the application process to qualify for CSA for a country designated by the Secretary, would be captured in the application fee charged to each adoption service provider. The application fee would relate directly to the review of application materials relating to the requirements for CSA that are tailored to circumstances in the designated country of origin.

*Cost to the Adoption Service Providers:* Because CSA would involve meeting new weighting or evidentiary requirements relating to existing standards, it would not likely impose significant costs on accredited and approved providers. Notwithstanding our projection that ASPs seeking CSA will be able to do so without significant additional cost to them beyond those normally associated with their accreditation, except for an application fee for CSA paid to the accrediting entity, some ASPs may believe they would incur additional costs to adapt their practices to conform with enhanced weighting and evidentiary requirements to qualify for CSA. Because the standards implicated are likely to vary with each iteration of CSA, it is not possible to project what those costs might be. The public is invited to comment on what, if any, additional costs ASPs might incur to qualify for CSA.

*Estimated Cost To Implement CSA:* An average cost of \$1,500 per applicant per CSA iteration.

- An average of 15 applicants per iteration of CSA

- At an estimated average cost of \$1,500 per applicant
- Equals \$22,500 per CSA iteration.
  - An average of two CSA designations per year
  - =  $\$22,500 \times 2 = \$45,000$  per year.

*Total Estimated Cost for CSA Implementation per Year: \$45,000.*

### 2. Strengthening Standards Related to Disclosure of Fees

The fee disclosure provisions in the proposed rule would refine the way fees are characterized and when and how they must be disclosed. However, these providers already know what they charge prospective adoptive families to complete an adoption abroad in specific countries. Disclosing the expected fees and expenses across an array of cost categories as defined in proposed § 96.40 would not be onerous or costly. We estimate the disclosure provisions would involve minimal administrative costs and labor associated with appropriately categorizing the fees and expenses, as well as printing new documents and making changes to a Web site, and that costs to ASPs and the accrediting entity (AE) associated with putting the new fee disclosure rules in place would be minimal. As we expect these costs to be less than \$500, we are using a primary average estimate of \$400.

*Total Cost To Implement Fee Disclosure Changes: \$400.*

### 3. Training and Preparing Prospective Adoptive Parents for Successful Parenting of Children Adopted Internationally

Changes in the training requirements for prospective adoptive parents in § 96.48 have three main elements:

(a) 20 hours of training offered by the State of residence that is provided to families adopting from the foster care system, or an equivalent where a State program is unavailable for prospective adoptive parents who wish to complete an intercountry adoption. We see three ways for families to obtain this training:

(1) States may provide the same training to intercountry adopting families as provided to families adopting from the foster care system in the State at no cost to the families. We anticipate that as many as 20 percent of adoptive families will be permitted to receive the required training through existing State training programs;

*Cost to Participants of Training Provided by States*

- This training is provided without out-of-pocket cost to prospective adoptive families, aside from the time spent in the training.

### Monetizing the Time Burden of Adoptive Parent Training

- Using the Bureau of Labor Statistics latest publication (June 2016) reporting average hourly wages of private, non-farm labor, the national average for all sectors is approximately \$26. Thus, 20 hours of training would equate to approximately \$520 per parent. If 20 percent of the estimated 6,000 prospective adoptive parents were to engage in such training each year, the time burden would equal approximately \$624,000. However, this training will not require out-of-pocket payment by prospective adoptive parents.

(2) ASPs may obtain training materials and participant workbooks already developed and ready to use supplied by one of the four primary training systems used throughout the United States for approximately \$800, including a training manual and training DVDs, reproducible as needed for home study preparers, who normally would provide this training, along with a participant's manual available for \$20 each.

*Estimated Cost of This Training Option for All Trainers (One-Time Cost)*

- \$800 plus the cost of reproducing the training manual and training DVDs 100 copies of the training materials at \$20 each = \$2,000 for reproduction of training materials.
- \$800 + \$2,000 = \$2,800 for all trainers counted together.

*Estimated Cost for All Prospective Adoptive Parents Annually*

- \$20 each\* × 5000 = \$100,000 (\*estimation assumption: of 5,648 U.S. intercountry adoptions in FY 2015, two thirds were adoptions of single children by one family, and the rest were adopted as sibling groups resulting in about 5,000 total adoptive families adopting that year.  $\$20 \times 5,000 = \$100,000$ .)

*Total Estimated Cost of ASPs Providing Independent Training Programs Equivalent to State Programs*

- $\$2800 + \$100,000 = \$102,800$  per year.

(3) A final option available to meet this new standard would be for an ASP to develop brand-new training materials tailored to the specific content and branding needs of individual providers. Because it is not possible to predict the cost to develop such training independently from scratch—we cannot predict the scale of users who would share in the cost, nor the extent to which the training is web-based, DVD-based, or fully human-moderated—we

do not make a projection of the cost of this option. It seems likely that the other two options will be the preferred options for those for whom the training is required.

#### Total Estimated Cost of Training

- \$102,800 per year.

Total Overall Estimated Economic Impact for the First Year in Terms of Costs to Adoption Service Providers and Prospective Adoptive Parents Taken as a Whole

- \$45,000 (CSA) + (\$400 Fee Reporting) + \$102,800 (Parent Training) + \$624,000 (opportunity cost of training) = \$772,400. Most of this cost is not an out-of-pocket cost but represents the opportunity cost of time spent in training.

Subsequent years would have similar costs minus the one-time cost of obtaining training materials for the required 20 hours of training equivalent to training offered by the State of residence that is provided to families adopting from the foster care system (\$102,800). The public is invited to comment on what, if any, additional costs ASPs might incur to implement the training provisions of the proposed rule.

*Benefits of the Proposed Changes:* The proposed changes in this rule would provide public benefit in terms of stronger preparations of prospective adoptive parents for a successful intercountry adoption, greater transparency as to adoption fees both in the United States and abroad, and the potential for improving practices in certain countries of origin through CSA that could potentially result in beginning or resuming intercountry adoption in countries of origin.

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

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

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

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive

Order 13175 do not apply to this rulemaking

#### *The Paperwork Reduction Act of 1995*

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

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

Adoption, Child welfare, Children, Child immigration, Foreign persons.

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

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

- 1. The authority citation for part 96 is revised to read as follows:

**Authority:** The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at The Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); 42 U.S.C. 14901–14954; 42 U.S.C. 14925.

#### **Subpart A—General Provisions**

- 2. Amend § 96.1, in the first sentence, by removing the comma and space between “106–279” and the closing parenthesis, and by adding a sentence to the end of the paragraph to read as follows:

##### **§ 96.1 Purpose.**

\* \* \* Subpart N of this part establishes the general procedures for country specific authorization.

##### **§ 96.2 [Amended]**

- 3. Amend § 96.2 by:

- a. Adding a sentence to the end of paragraph (6) of the definition of “Adoption service”; and
- b. Adding definitions for “Authorization”, “Central Authority function”, “Country specific authorization (CSA)”, and “USCIS” in alphabetical order:

The additions read as follows:

##### **§ 96.2 Definitions.**

\* \* \* \* \*

*Adoption service* \* \* \*

(6) \* \* \* The term “providing,” with respect to an adoption service, includes facilitating the provision of the service.

\* \* \* \* \*

*Authorization* means the permission from a Central Authority for an agency or person to act in a country with respect to an intercountry adoption. In the United States, accreditation or approval provides general authorization

to act with respect to an intercountry adoption, other than in those countries for which the Secretary has also required country specific authorization (CSA). Where required, an accredited agency or approved person must also have the authorization of the relevant country to act in that country.

\* \* \* \* \*

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

\* \* \* \* \*

*Country specific authorization (CSA)* means authorization by a U.S.

accrediting entity of an accredited agency or approved person in the United States to act as a primary provider under § 96.14(a) in connection with an intercountry adoption involving a specific foreign country identified by the Secretary, according to subpart N of this part. While CSA requires compliance with all requirements imposed by a foreign country in relation to intercountry adoption, CSA does not constitute authorization from a foreign government to engage in activities related to intercountry adoption, where such authorization is required. CSA ceases automatically and immediately upon the corresponding foreign country’s withdrawal or cancellation of its authorization of the agency or person.

\* \* \* \* \*

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

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

- 4. Revise § 96.4(c) to read as follows:

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

\* \* \* \* \*

(c) A public entity, within the meaning provided in § 96.5(b), may only be designated to accredit agencies and approve persons that are located in the public entity’s State.

- 5. Revise § 96.6(c) to read as follows:

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

\* \* \* \* \*

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



IAA or UAA; it can also monitor the performance of those accredited agencies and approved persons to which it has granted country specific authorization;

\* \* \* \* \*

■ 6. Amend § 96.7 by:

■ a. Redesignating paragraphs (a)(3) through (8) as paragraphs (a)(4) through (9), respectively, and add new paragraph (a)(3); and

■ b. Revising newly redesignated paragraph (a)(5).

The additions and revisions read as follows:

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

(a) \* \* \*

(3) Determining whether such agencies or persons are also eligible for country specific authorization when such authorization is sought;

\* \* \* \* \*

(5) Reviewing complaints about accredited agencies and approved persons (including their use of supervised providers and verification of adoption services provided by foreign providers);

\* \* \* \* \*

■ 7. Revise § 96.8(a) and (b) to read as follows:

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

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

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

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

(b) The schedule of fees must:

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

(2) Establish separate, non-refundable fees for country specific authorization; and

(3) Include in each fee for accreditation or approval or country specific authorization the costs of all activities associated with the accreditation or approval cycle or with country specific authorization, where appropriate, including but not limited to, costs for completing the accreditation or approval process, costs for completing country specific authorization, where applicable, complaint review, routine oversight and enforcement, and other data collection and reporting activities, except that separate fees based on actual costs incurred may be charged for the travel and maintenance of evaluators.

\* \* \* \* \*

■ 8. Revise § 96.9(c) to read as follows:

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

\* \* \* \* \*

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

\* \* \* \* \*

■ 9. Revise § 96.10(c)(6) to read as follows

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

\* \* \* \* \*

(c) \* \* \*

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

\* \* \* \* \*

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

■ 10. Amend § 96.12:

■ a. In the introductory text of paragraph (a) by removing “once the UAA becomes effective” and removing “transitional” and adding in its place “transition” in both places; and

■ b. By revising paragraph (c) and adding paragraphs (d) and (e).

The revisions and additions read as follows:

**§ 96.12 Authorized adoption service providers.**

\* \* \* \* \*

(c) Neither conferral nor maintenance of accreditation or approval or country

specific authorization, nor status as an exempted or supervised provider, nor status as a public domestic authority shall be construed to imply, warrant, or establish that, in any specific case, an adoption service has been provided consistently with, the Convention, the IAA, the UAA, or the regulations implementing the IAA or UAA.

Conferral and maintenance of accreditation or approval, and, when required, country specific authorization, under this part establishes only that the accrediting entity has concluded, in accordance with the standards and procedures of this part, that the agency or person conducts adoption services in substantial compliance with the applicable standards set forth in this part; it is not a guarantee that in any specific case the accredited agency or approved person is providing adoption services consistently with the Convention, the IAA, the UAA, the regulations implementing the IAA or UAA, or any other applicable law, whether Federal, State, or foreign. Neither the Secretary nor any accrediting entity shall be responsible for any acts of an accredited agency, approved person, exempted provider, supervised provider, or other entity providing services in connection with an intercountry adoption.

(d) The agency or person must maintain authorization from the relevant foreign country, where the agency or person seeks to offer, provide, facilitate, verify or supervise the provision of adoption services in a foreign country, if required by that country.

(e) The agency or person, if seeking to act as a primary provider under 96.14(a) in connection with intercountry adoptions involving a country that has been designated by the Secretary as requiring country specific authorization, must maintain that country specific authorization as provided in subpart N of this part.

■ 11. Revise § 96.14(c)(3) to read as follows:

**§ 96.14 Providing adoption services using other providers.**

\* \* \* \* \*

(c) \* \* \*

(3) A foreign provider (agency, person, or other non-governmental entity) that is not under its supervision, where the primary provider has not previously worked with the foreign provider in the current or previous accreditation cycle, or where the primary provider has not accepted the case as part of a transfer plan in § 96.33(f), and either the foreign provider



(i) Has secured the necessary consent to termination of parental rights and to adoption prior to an accredited agency or approved person or their supervised providers providing any adoption service(s) in the case, other than preparing a home study on prospective adoptive parents, if the primary provider verifies consent pursuant to § 96.46(c); or

(ii) Has prepared a background study on a child in a case involving immigration to the United States (incoming case) or a home study on prospective adoptive parent(s) in a Convention adoption case involving emigration from the United States (outgoing case), and a report on the results of such a study prior to an accredited agency or approved person or their supervised providers providing any adoption service(s) in the case, other than preparing a home study on prospective adoptive parents, if the primary provider verifies the study and report pursuant to § 96.46(c).

\* \* \* \* \*

■ 12. Revise § 96.15 to read as follows:

#### § 96.15 Examples.

The following examples illustrate the rules of §§ 96.12 through 96.14:

*Example 1.* Identifying a child for adoption and arranging an adoption. Agency Y, located in the United States, takes steps to place a particular child residing in a foreign country with a particular adoptive family in the United States. Agency Y must be accredited, approved, or supervised because it is identifying a child and arranging an intercountry adoption. By contrast, Agency X, also a U.S. agency, identifies children eligible for adoption in the United States on a TV program in an effort to recruit prospective adoptive parent(s). A prospective adoptive parent residing in a foreign country calls Agency X about one of the children. Agency X refers them to an agency or person in the United States who arranges intercountry adoptions. Agency X does not require accreditation, approval, or supervision because it is not both identifying and arranging the adoption.

*Example 2.* Foreign supervised providers. Agency X, a U.S. agency, works in a foreign country with orphanage Y, facilitator A, orphanage director B, and driver/translator C. Agency X must supervise Orphanage Y, a private, non-governmental organization in a foreign country, if Agency X has established a formal or informal relationship or arrangement whereby Orphanage Y provides information or services to help Agency X match a particular child with an adoptive family. In that case, Orphanage Y, which is not a public foreign authority or a competent authority, is providing at least one adoption service (identifying a child and arranging an adoption). Throughout the adoption process, Facilitator A and Orphanage Director B work together to prepare documentation on the child and move the adoption paperwork

through various ministries and government offices. Because “providing” an adoption service includes “facilitating” the provision of an adoption service, all the contributing services involved in placing a particular child with a particular family are considered the provision of an adoption service, and therefore must be supervised if not performed by the primary provider or public foreign authority. When Agency X uses foreign providers to provide adoption services, it must treat them as supervised providers in accordance with § 96.46(a) and (b), unless it is using the foreign providers in accordance with § 96.14(c)(3). By contrast, when the prospective adoptive parents arrive in the foreign country to adopt the child, Driver/Translator C drives them to various adoption-related appointments and serves as a translator. He does not, however, assist with transmitting documents, paying fees, or any other action related to the provision of adoption services. Agency X does not need to treat Driver/Translator C as a foreign supervised provider, because he is not providing or facilitating the provision of adoption services.

*Example 3.* Foreign supervised providers. Individual Y works in Foreign Country A gathering documentation on children eligible for adoption, including reports on the child prepared by orphanages and medical reports. Agency X, a U.S. agency, sends Individual Y information on prospective adoptive parents. Individual Y takes documents for a set of prospective adoptive parents, and for an eligible child, to the Ministry with the authority to match parents and children. The Ministry reviews the proposed match and issues documentation to assign the child to the prospective adoptive parent. Agency X must treat Individual Y as a foreign supervised provider in accordance with § 96.46(a) and (b) because Individual Y is providing adoption services.

*Example 4.* Child welfare services exemption. Doctor X evaluates the medical records and a video of Child Y. The evaluation will be used in an intercountry adoption as part of the placement of Child Y and is the only service that Doctor X provides in the United States with regard to Child Y's adoption. Doctor X (not employed with an accredited agency or approved person) does not need to be approved or supervised because she is not providing an adoption service as defined in § 96.2.

*Example 5.* Home study exemption. Social Worker X, in the United States, (not employed with an accredited agency or approved person) interviews Prospective Adoptive Parent Y, obtains a criminal background study, and checks the references of Prospective Adoptive Parent Y, then composes a report and submits the report to an accredited agency for use in an intercountry adoption. Social Worker X does not provide any other services to Prospective Adoptive Parent Y. Social Worker X qualifies as an exempted provider and therefore need not be approved or operate as supervised provider. In contrast, Social Worker Z, in the United States (not employed with an accredited agency or approved person) prepares a home study report for Prospective Adoptive Parent(s) W, and in addition re-

enters the house after Child V has been placed with Prospective Adoptive Parent(s) W to assess how V and W are adjusting to life as a family. This assessment is post-placement monitoring, which is an adoption service. Therefore, Social Worker Z would need to become approved before providing this assessment for this intercountry adoption or else operate as a supervised provider. If an agency or person provides an adoption service in addition to a home study or child background study, the agency or person needs to become accredited, approved, or supervised before providing that adoption service.

*Example 6.* Child background study exemption. An employee of Agency X, a U.S. agency, interviews Child Y in the United States and compiles a report concerning Child Y's social and developmental history for use in an intercountry adoption. Agency X provides no other adoption services on behalf of Child Y. Agency X does not need to be accredited, approved, or supervised. Agency X is only conducting and creating a child background study, and therefore is an exempted provider. In contrast, an employee of Agency Z interviews Child W in the United States and creates a child background study for use in an intercountry adoption. Agency Z subsequently identifies prospective adoptive parent(s) and arranges a new adoption when Child W's previous adoption is dissolved. Agency Z needs to be accredited, approved, or supervised before providing this service. If an agency or person provides an adoption service in addition to a child background study or home study, the agency or person needs to be accredited, approved, or supervised before providing the additional service.

*Example 7.* Home study and child welfare services exemptions. Agency X, a U.S. agency, interviews Prospective Adoptive Parent Y, obtains a criminal background check, checks the references of Prospective Adoptive Parent Y, then composes a home study and submits it to an accredited agency for use in an intercountry adoption in the United States. Parent Y later joins a post-adoption support group for adoptive parents sponsored by Agency X. If Agency X performs no other adoption services, Agency X does not need to be accredited, approved, or supervised. If an agency or person provides a home study or child background study as well as other services in the United States that do not require accreditation, approval, or supervision, and no other adoption services, the agency or person is an exempted provider.

*Example 8.* Exempted provider. Agency X, a U.S. agency, interviews Prospective Adoptive Parent(s) Y, obtains a criminal background check, checks the references of Prospective Adoptive Parent(s) Y, and then composes a home study and submits the report to an accredited agency for review and approval. In addition, Agency X interviews Child Z and compiles a report concerning Child Z's social and developmental history. All of Agency X's work is done in the United States. Both reports will be used in an intercountry adoption. If Agency X performs no other adoption services, Agency X does not need to be accredited, approved, or

supervised. If an agency or person provides a home study and child background study as well as other services that do not require accreditation, approval or supervision, and no other adoption services, the agency or person is an exempted provider.

**Example 9.** Legal services exemption. Attorney X (not employed with an accredited agency or approved person) provides advice and counsel to Prospective Adoptive Parent(s) Y on filling out DHS paperwork required for an intercountry adoption. Among other papers, Attorney X prepares an affidavit of consent to termination of parental rights and to adoption of Child W to be signed by the birth mother in the United States. Attorney X must be approved or supervised because securing consent to termination of parental rights is an adoption service. In contrast, Attorney Z (not employed with an accredited agency or approved person) assists Adoptive Parent(s) T to complete an adoption in the State in which they reside, after they have been granted an adoption in Child V's foreign country of origin. Attorney Z is exempt from approval or supervision because she is providing legal services, but no adoption services.

**Example 10.** Post-placement monitoring. A court in a foreign country has granted custody of Child W to Prospective Adoptive Parent(s) Y pending the completion of W's adoption. Agency X interviews both Prospective Adoptive Parent(s) Y and Child W in their home in the United States. Agency X, a U.S. agency, gathers information on the adjustment of Child W as a member of the family and inquires into the social and educational progress of Child W. Agency X must be accredited, approved, or supervised. Agency X's activities constitute post-placement monitoring, which is an adoption service. In contrast, if Person Z provided counseling for Prospective Adoptive Parent(s) Y and/or Child W, but provided no adoption services in the United States to the family, Person Z would not need to be approved or supervised. Post-placement counseling is different than post-placement monitoring because it does not relate to evaluating the adoption placement. Post-placement counseling is not an adoption service and does not trigger the accreditation/approval requirements of the IAA or the UAA and this part.

**Example 11.** Post-adoption services. Foreign Country H requires that post-adoption reports be completed and sent to its Central Authority every year until adopted children reach the age of 18. Agency X, a U.S. agency, provides support groups and a newsletter for U.S. parents that have adopted children from Country H and encourages parents to complete their post-adoption reports annually. Agency X does not need to be accredited, approved, or supervised because it is providing only post-adoption services. Post-adoption services are not included in the definition of adoption services, and therefore, do not trigger accreditation/approval requirements of the IAA or the UAA and this part.

**Example 12.** Assuming custody and providing services after a disruption. Agency X provides counseling for Prospective

Adoptive Parent(s) Y and for Child W pending the completion of Child W's intercountry adoption. The placement eventually disrupts. Agency X helps recruit and identify new prospective adoptive parent(s) for Child W, but it is Agency P that assumes custody of Child W and places him in foster care until an alternative adoptive placement can be found. Agency X is not required to be accredited, approved, or supervised because it is not providing an adoption service in the United States as defined in § 96.2. Agency P, on the other hand, is providing an adoption service and would have to be accredited, approved, or supervised.

**Example 13.** Making non-judicial determinations of best interest of child and appropriateness of adoptive placement of child. Agency X, a U.S. agency, receives information about and a videotape of Child W from the institution where Child W lives in a foreign country. Based on the age, sex, and health problems of Child W. Agency X matches Prospective Adoptive Parent(s) Y with Child W. Prospective Adoptive Parent(s) Y receive a referral from Agency X and agree to accept the referral and proceed with the adoption of Child W. Agency X determines that Prospective Adoptive Parent(s) Y are a good placement for Child W and notifies the competent authority in W's country of origin that it has found a match for Child W and will start preparing adoption paperwork. Agency X is performing an adoption service and must be accredited, approved, or supervised.

**Example 14.** Securing necessary consent to termination of parental rights and to adoption. Facilitator Y, a foreign facilitator, is accredited by Foreign Country Z. He has contacts at several orphanages in Foreign Country Z and helps Agency X, a U.S. agency, match children eligible for adoption with prospective adoptive parent(s) in the United States. Facilitator Y works with the institution that is the legal guardian of Child W in order to get the documents showing the institution's legal consent to the adoption of Child W. Agency X is the only U.S. agency providing adoption services in the case. If Facilitator Y secured the necessary consent prior to Agency X's involvement in the case, and Agency X and Facilitator Y have not worked together in the current or previous accreditation cycle or if Agency X has accepted the case as part of a transfer plan, then Agency X could proceed if it verifies the consent secured by Facilitator Y in accordance with § 96.14(c) and § 96.46(c) and would not need to treat Facilitator Y as a supervised provider in this case. However, in any case thereafter in which Agency X works with Facilitator Y, Agency X must treat Facilitator Y as a foreign supervised provider.

**Example 15.** Parents acting on their own behalf. Prospective Adoptive Parent Y prepares and submits intercountry adoption-related documents to government authorities in Country A. An accredited agency or approved person must act as primary provider to ensure that all six adoption services are provided, develop and implement a service plan, and supervise any agency, person, or other non-governmental entity who assists Prospective Adoptive

Parent Y in completing any adoption service. If the consent was obtained or a report on the child written by a foreign provider (with whom the primary provider has not previously worked in the current or previous accreditation cycle) before an accredited agency, approved person, or their supervised providers provided any adoption services in the case, the primary provider is not responsible for supervising that foreign provider's work in this case prior to the primary provider's entry on the case. However, the primary provider must verify, in accordance with § 96.46(c), any consents obtained by any such foreign provider, and any background study on the child or home study on the Prospective Adoptive Parent Y prepared by any such foreign provider. After the primary provider's entry on the case, any adoption services provided by the unsupervised foreign provider must be supervised. The primary provider does not need to supervise Prospective Adoptive Parent Y because prospective adoptive parents do not need to be accredited, approved, or supervised to act on their own behalf.

■ 13. Add a sentence to the end of the paragraph in § 96.17 to read as follows:

**§ 96.17 Effective date of accreditation and approval requirements.**

\* \* \* Revisions to § 96.60(b) providing for the staggering of accreditation and approval renewal applications became effective on September 18, 2015.

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

■ 14. Amend § 96.24 by revising the introductory text of paragraph (c) to read as follows:

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

\* \* \* \* \*

(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 members of its governing body, 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 agency or person must provide an appropriate setting for interviews and review of case 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:

\* \* \* \* \*

#### **§ 96.25 [Amended]**

■ 15. Amend § 96.25(c) by adding the phrase “or engages in deliberate destruction of documentation,” after the phrase “as requested, ”.

#### **§ 96.26 [Amended]**

■ 16. Amend § 96.26(a) by removing the space within the word “performance” .

■ 17. Amend § 96.27 by revising paragraphs (a) and (c) through (g), and adding paragraph (h) to read as follows:

#### **§ 96.27 Substantive criteria for evaluating applicants for accreditation or approval and for country specific authorization.**

(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 and, to the extent that the agency or person wishes to act as primary provider under § 96.14(a) in a country that requires country specific authorization, that it is in substantial compliance with subparts N and F of this part.

\* \* \* \* \*

(c) The standards contained in subpart F of this part apply during all the stages of accreditation and approval, including, but not limited to, when the accrediting entity is evaluating an applicant for accreditation or approval, when it is deciding whether to grant an agency or person applicable country specific authorization, when it is determining whether to renew an agency's or person's accreditation or approval or any applicable country specific authorization(s), when it is monitoring the performance of an accredited agency or approved person, and when it is taking adverse action against an accredited agency or approved person. Except as provided in § 96.25 and paragraphs (e) and (f) of this section, the accrediting entity may only use the standards contained in subpart F of this part when determining whether an agency or person may be granted or permitted to maintain accreditation or approval, and, where applicable, country specific authorization.

(d) The Secretary will ensure that each accrediting entity performs its accreditation and approval functions using only a method approved by the Secretary that is substantially the same as the method approved for use by each other accrediting entity. Each such

method will include: An assigned value for each standard (or element of a standard); a method of rating an agency's or person's compliance with each applicable standard, including any country specific criteria for compliance with that standard under subpart N of this part; and a method of evaluating whether an agency's or person's overall compliance with all applicable standards establishes that the agency or person is in substantial compliance with the standards and can be accredited or approved. The Secretary will ensure that the value assigned to each standard reflects the relative importance of that standard to compliance with the Convention, the IAA, and the UAA, and is consistent with the value assigned to the standard by other accrediting entities. The accrediting entity must advise applicants of the value assigned to each standard (or elements of each standard) at the time it provides applicants with the application materials.

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

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

(g) Substantial compliance with the standards contained in subpart F of this part does not eliminate the need for an agency or person to comply fully with the laws of the jurisdictions in which it operates. An agency or person must provide adoption services in intercountry adoption cases consistent with the laws of any State in which it operates and with the Convention, the IAA, and the UAA. Persons that are

approved to provide adoption services may only provide such services in States that do not prohibit persons from providing adoption services. Nothing in the application of subparts E and F should be construed to require a State to allow persons to provide adoption services if State law does not permit them to do so.

(h) 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 foreign countries in which it acts. Accredited agencies or approved persons may only provide adoption services when authorized by the foreign country to do so, where such authorization is required.

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

■ 18. Amend § 96.33 by revising paragraphs (a) and (e) through (i) and adding paragraphs (j) through (l) to read as follows:

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

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

\* \* \* \* \*

(e) The agency's or person's balance sheets show that it operates on a sound financial basis and maintains on average sufficient cash reserves, assets, or other financial resources to meet its operating expenses for two months, taking into account its projected volume of cases and its size, scope, and financial commitments.

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

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

(h)(1)The agency or person assesses the risks it assumes, including by reviewing, among other things:

(i) Compliance with legal and regulatory requirements;

- (ii) Health and safety;
- (iii) Human resources practices;
- (iv) Contracting practices and compliance;
- (v) Client rights and confidentiality issues;
- (vi) Financial risks; and
- (vii) Conflicts of interest.

(2) The agency or person uses the assessment to meet the requirements in paragraph (i) of this section and as the basis for determining the type and amount of professional, general, directors' and officers', errors and omissions, and other liability insurance to carry.

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

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

(k) Accounting records are kept up-to-date and balanced on a monthly basis, as demonstrated by:

- (1) Timely reconciliation of the bank statement and subsidiary records to the general ledger;
- (2) Up-to-date posting of cash receipts and disbursements;
- (3) Monthly updating of the general ledger; and
- (4) Review of the bank reconciliation by a person other than the person who performs the reconciliation or signs checks.

(l) The agency or person complies with the Foreign Corrupt Practices Act and other Federal laws. The agency or person has a system of internal controls and record keeping that ensures that funds spent directly or indirectly for performing any activity related to an intercountry adoption are executed and accounted for in accordance with the intended purpose of the payment.

■ 19. Revise § 96.34 to read as follows:

#### § 96.34 Compensation.

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

(b) The agency or person compensates its directors, officers, employees, and supervised providers or any other agent, individual or entity involved in an intercountry adoption 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 that are not intended to influence or affect a particular adoption. All such donations should be disclosed to the accrediting entity.

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

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

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

■ 20. Amend § 96.35:

■ a. By revising the introductory text of paragraph (b) and paragraphs (b)(8) and (9), and adding paragraph (b)(10);

■ b. By revising the introductory text of paragraph (c) and paragraph (c)(2); and

■ c. By removing and reserving paragraphs (c)(4) and (d)(2).

The additions and revisions read as follows:

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

\* \* \* \* \*

(b) In order to permit the accrediting entity to evaluate the suitability of an agency or person for accreditation or approval and any applicable country specific authorization under subpart N, the agency or person discloses to the accrediting entity the following information related to the agency or

person, under its current or any former name:

\* \* \* \* \*

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

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

(10) Any instances where any current director, officer, or employee was involved in any of the activities in paragraphs (b)(1) through (9) of this section while employed by another entity involved in providing an adoption service.

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

\* \* \* \* \*

(2) Any convictions, formal disciplinary actions or known current investigations of any such individual who is in a senior management position for acts involving financial irregularities;

\* \* \* \* \*

■ 21. Revise § 96.36(b) to read as follows:

#### § 96.36 Prohibition on child buying.

\* \* \* \* \*

(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. The agency's or person's policies and procedures require its employees and agents to retain a record of the payment or fee tendered and the purpose for which it was paid for as long as adoption records are kept in accordance with 22 CFR part 98, and provide a copy thereof to the agency or person.

■ 22. Add paragraph (h) to § 96.37 to read as follows:

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

\* \* \* \* \*

(h) The agency or person has sufficient financial resources and appropriately qualified personnel in place and assigned to appropriate duties such that the agency or person can demonstrate that the agency or person

can provide adoption-related services that involve the application of clinical skills and judgment, including post-placement counseling and support.

■ 23. Amend § 96.38 by revising paragraphs (a)(2), (b)(1), (4), and (7), and (d) to read as follows:

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

(a) \* \* \*

(2) The INA provisions applicable to the immigration of children described in INA 101(b)(1)(F) and (G);

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

(4) Psychological issues facing children who have experienced trauma, including abuse or neglect, and/or whose parents' parental rights have been terminated because of abuse or neglect;

\* \* \* \* \*

(7) The most frequent sociological, medical, and psychological problems experienced by children from the foreign countries served by the agency or person.

\* \* \* \* \*

(d) The agency or person exempts newly hired and current employees from elements of the orientation and initial training required in paragraphs (a) and (b) of this section only where the employee has demonstrated competence in the topics outlined in those paragraphs and knowledge of the Convention, the IAA, and the UAA.

■ 24. Amend § 96.39 by revising paragraphs (a)(1) through (3) and adding paragraphs (a)(4) through (6) to read as follows:

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

(a) \* \* \*

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

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

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

(4) Every country in which it is authorized by the foreign country or otherwise permitted to work;

(5) Every country for which the agency or person has received country

specific authorization when so required by the Secretary; and

(6) Any past and current adverse action.

\* \* \* \* \*

■ 25. Amend § 96.40 by:

■ a. Revising paragraphs (a) through (c);

■ b. Redesignating paragraphs (d) through (h) as paragraphs (g) through (k), respectively;

■ c. Adding new paragraphs (d) through (f); and

■ d. Revising newly redesignated paragraph (j).

The revisions and additions read as follows:

**§ 96.40 Fee policies and procedures.**

(a) *In general.* (1) Before prospective adoptive parent(s) contract with the agency or person for provision of adoption services, the agency or person provides:

(i) To all interested prospective adoptive parents, a written schedule of expected total fees and estimated expenses conforming to the categories of adoption expenses in the United States found in paragraph (b) of this section and in foreign countries found in paragraph (c) of this section; and

(ii) An explanation of the conditions under which fees or expenses may be charged, waived, reduced, or refunded if the service is not provided, and information regarding when and how the fees and expenses must be paid.

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

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

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

to be prepared by a public domestic authority and the agency or person collects the associated fees;

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

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

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

(3) *Fees to cover overhead and operating costs.* (i) Operational costs that will be charged on a pro rata basis for operating programs in the foreign country, such as but not limited to the agency's or person's employee travel to the foreign country;

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

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

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

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

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

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

(i) Supervised providers in the United States; and

(ii) Exempted providers in the United States.

(7) *Translation and documentation expenses.* Expected fees and estimated expenses for obtaining any necessary documents and for any translation of documents related to the adoption, along with information on whether the prospective adoptive parent(s) will be expected to pay such costs directly or to third parties, or through the agency or person. This category includes, but is not limited to, costs for obtaining, translating, or copying records or

documents required to complete the adoption; costs for the child's court documents, passport, adoption certificate and other documents related to the adoption; and costs for authentications, for notarizations and for certifications in the United States.

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

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

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

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

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

(ii) For foreign court or other adjudicative fees.

(4) *Support for child welfare.* Any fixed contribution, amount or percentage that the prospective adoptive parent(s) will be expected or required to make to child protection or child welfare service programs in the foreign country, either directly or indirectly, along with an explanation of the intended use of the contribution and the manner in which the contribution will be recorded and accounted for. Any such required contribution shall comply with the requirements of paragraph (e) of this section.

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

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

(i) Supervised providers in the foreign country; and

(ii) Foreign providers.

(7) *Fees for other individuals or entities.* (i) Expected fees and estimated

expenses to or for the Central Authority, competent authority or public foreign authority of the government of the foreign country, including but not limited to fees charged for services rendered or for processing fees;

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

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

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

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

(f) If the agency or person provides support to orphanages or child-welfare centers in a foreign country for the care of children including, but not limited to, costs for food, clothing, shelter and medical care, or foster care services:

(1) The amounts paid should not be unreasonably high in relation to the services actually rendered, taking into account what such services actually cost in the country in which the services are provided; and

(2) The agency or person may not require prospective adoptive parents to pay fees or make contributions that are connected to the care of a particular child or are based on the length of time an adoption takes to complete, nor may they arrange, facilitate, or encourage such payments between prospective

adoptive parents or any individual, entity or orphanage.

\* \* \* \* \*

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

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

(2) It obtains the specific consent of the prospective adoptive parent(s) prior to expending any funds in excess of \$1000 for which the agency or person will hold the prospective adoptive parent(s) responsible; and

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

\* \* \* \* \*

■ 26. Revise § 96.41(b) to read as follows:

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

\* \* \* \* \*

(b) The agency or person permits any birth parent, prospective adoptive parent or adoptive parent, or adoptee to lodge directly with the agency or person signed and dated complaints about any of the services or activities of the agency or person including its use of supervised providers and verification of adoption services provided by foreign providers that he or she believes raise an issue of compliance with the Convention, the IAA, the UAA, or the regulations implementing the IAA or UAA, and advises such individuals of the additional procedures available to them if they are dissatisfied with the agency's or person's response to their complaint.

\* \* \* \* \*

■ 27. Amend § 96.43 by:

■ a. Revising paragraphs (b)(3)(v) through (vii) and adding paragraphs (b)(3)(viii) through (xii);

■ b. Revising paragraphs (b)(4)(v) through (vii) and adding paragraphs (b)(4)(viii) through (xii); and

■ c. Revising paragraphs (b)(5) and (6).

The additions and revisions read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(v) Citizenship of the child;

(vi) Location of the child's adoption documentation and documentation relating to the citizenship or immigration status of the child;

(vii) Last known physical location of the child;

(viii) Name of legal guardian(s) or physical custodian(s) of the child;

(ix) The reason(s) for and resolution(s) of the disruption of the placement for adoption, including information on the child's re-placement for adoption and final legal adoption;

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

(xi) The plans for the child; and

(xii) Which authorities have been notified of the disruption.

(4) \* \* \*

(v) Citizenship of the child;

(vi) Location of the child's adoption documentation and documentation relating to the citizenship or immigration status of the child;

(vii) Last known physical location of the child;

(viii) Name of legal guardians or physical custodian of the child;

(ix) The reason(s) for and resolution(s) of the dissolution of the adoption, to the extent known by the agency or person;

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

(xi) The plans for the child; and

(xii) Which authorities have been notified of the dissolution.

(5) Information on the shortest, longest, and average length of time it takes to complete an intercountry adoption, set forth by the child's country of origin, calculated from the time the child is matched with the prospective adoptive parent(s) until the time the adoption is finalized by a judicial or administrative body, excluding any period for appeal;

(6) Information on the range of adoption fees, including the lowest, highest, average, and the median of such fees, set forth by the child's country of origin, charged by the agency or person for intercountry adoptions involving children immigrating to the United States in connection with their adoption for each category in § 96.40(b) and (c).

\* \* \* \* \*

■ 28. Amend § 96.44 by adding paragraphs (c) through (e) to read as follows:

**§ 96.44 Acting as primary provider.**

\* \* \* \* \*

(c) If applying for CSA, the agency or person demonstrates its capacity to meet all requirements for the applicable

country specific authorization according to subparts F and N of this part.

(d) The agency or person, when acting as primary provider, ensures that the steps in the intercountry adoption process are completed in accordance with applicable State, federal, and foreign law and in a manner that does not prejudice the child's eligibility for an immigrant visa petition approval and visa issuance under section 101(b)(1)(F) or (G) of the INA. For example, in Convention cases, this generally requires providing services so that the applicable immigrant visa petition is filed with USCIS before the petitioner completed the adoption or obtained legal custody for purposes of emigration and adoption. (See also 8 CFR 204.309(b)(1)). This section does not preclude an agency or person from acting as a primary provider in cases in which adoption services were already provided before that agency or person became involved.

(e) The agency or person, when acting as a primary provider, provides adoption services in a manner that, consistent with U.S. and foreign law, collects all appropriate and required documentation to demonstrate the child's eligibility for immigrant visa petition approval and visa issuance under section 101(b)(1)(F) or (G) of the INA.

■ 29. Amend § 96.46 by revising paragraphs (b)(4) and (c)(1) through (3) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

(c) \* \* \*

(1) Any necessary consent to termination of parental rights or to adoption obtained by the foreign provider was obtained in accordance with applicable U.S. law, foreign law and, in Convention countries, Article 4 of the Convention; in non-Convention countries, any necessary consents should be obtained consistent with Article 4 of the Convention.

(2) Any background study and report on a child in a case involving immigration to the United States (an incoming case) performed by the foreign

provider was performed in accordance with applicable U.S. law, foreign law and, in Convention countries, Article 16 of the Convention; in non-Convention countries, such background study and report should be performed consistent with Article 16 of the Convention.

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

■ 30. Add paragraph (e) to § 96.47 to read as follows:

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

\* \* \* \* \*

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

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

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

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

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

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

■ 31. Revise § 96.48 to read as follows:

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

(a)(1) The agency or person verifies that prospective adoptive parent(s) have satisfactorily completed the training required by their State of actual or proposed residence in the United States to adopt a child through the State's child welfare system, or an equivalent where a State program is unavailable for



prospective adoptive parent(s) who wish to complete an intercountry adoption. The agency or person shall not refer a child or charge for or contractually obligate the prospective adoptive parent(s) to pay for the following adoption services until the training required under this paragraph has been completed:

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

(ii) Monitoring of a case after a child has been placed with prospective adoptive parent(s) until final adoption; and

(iii) Where made necessary by disruption before final adoption, assuming custody and providing (including facilitating provision of) child care or any other social service pending an alternative placement.

(2) This section does not preclude an agency or person from providing adoption services in cases in which that agency or person was not involved prior to the identification of a particular child or in cases where documented, compelling, urgent, and extraordinary circumstances involving the child's best interests require an expedited referral. Upon referral in such cases, the primary provider will be required to ensure the necessary training has been completed in a reasonable time.

(b) The agency or person also provides the prospective adoptive parent(s) with at least seven additional hours (independent of the home study) of preparation and training, as described in this paragraph, 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. The preparation and training provided by the agency or person includes a combination of interactive discussion, counseling, and development of solution-oriented strategies to address the following topics:

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

(2) The effects and long-term impact on children of the behavioral, medical, and emotional difficulties that may be prevalent in children who have faced the following:

(i) Malnutrition, relevant environmental toxins, maternal substance abuse, any other known genetic, health, emotional, and developmental risk factors associated

with children from the expected country of origin;

(ii) Leaving familiar ties and surroundings and the grief, loss, and identity issues that children may experience in intercountry adoption;

(iii) Institutionalization, 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;

(iv) 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;

(3) The general characteristics of successful intercountry adoptive placements, including information on the financial resources, time, and insurance coverage necessary for handling the child's and family's adjustment and medical, therapeutic, and educational needs, including language acquisition;

(4) The family's experience with adoption and discussion of any previous intercountry or domestic adoptions, anticipated future plans for bringing additional children into the family, the prospective adoptive parent(s) past and present parenting experience, the number and ages of other children, prior home study approvals and denials, past compliance with post-placement reporting required by the country of origin, and any medical, educational, or therapeutic needs of the current members of the family;

(5) Post-placement and post-adoption services that may assist the family to respond effectively to adjustment, behavioral, and other difficulties that may arise after the child is placed with the adoptive parent(s);

(6) General information about disruption of placement and dissolution of adoption and discussion of issues that may lead to disruption or dissolution, including how parent(s) may locate appropriate resources and specific points of contact for support;

(7) Any disrupted placements or dissolved adoptions in which the prospective adoptive parent(s) were involved, reasons for the past disruption or dissolution, and information about the welfare and whereabouts of any previously adopted children;

(8) The laws and adoption processes of the expected country or countries of origin, including foreseeable delays and impediments to finalization of an adoption; U.S. immigration processes and procedures relevant to the expected country (or countries) of origin; and the prospective adoptive parent(s)' rights and responsibilities in the event they

determine not to proceed after arriving in the child's country of origin;

(9) The long-term implications for a family that has become multicultural through intercountry adoption;

(10) For prospective adoptive parent(s) seeking approval to adopt two or more unrelated children, the differing needs of such children based on their respective ages, backgrounds, length of time outside of family care, and the time management requirements and other challenges that may be presented in such an adoption plan; and

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

(c)(1) In order to prepare prospective adoptive parent(s) as fully as possible for the adoption of a particular child, the agency or person provides:

(i) At least three additional hours of training that:

(A) Take place after identification of a particular child and prior to acceptance of the referral by the prospective adoptive parent(s); and

(B) Include counseling on:

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

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

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

(ii) A statement from the primary provider suitable for submission with the immigrant petition signed under penalty of perjury under United States law, indicating that all of the preparation and training provided for in § 96.48 has been completed.

(2) This section does not preclude an agency or person from providing adoption services in cases in which that agency or person was not involved prior to the identification of a particular child. If the child was referred prior to the involvement of an agency or person, the agency or person must complete this training requirement within a reasonable time after the agency or person is engaged to provide adoption services or must verify that it has already been completed. The agency or person may not continue to provide adoption services if a reasonable time has elapsed without completing the training.

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

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

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

(3) Individual counseling sessions; and

(4) Video, computer-assisted, or distance learning methods using standardized curricula; not to exceed 25 percent of the total training time for prospective adoptive parent(s) residing in the United States.

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

(f) The agency or person provides the prospective adoptive parent(s) with additional training or counseling, if requested by the prospective adoptive parent(s), and 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; crisis intervention and respite care; and seeking appropriate help when needed, including points of contact for assistance to disrupt a placement for adoption or dissolve an adoption in a manner that ensures the best interests of the child.

(g) The agency or person shall not exempt prospective adoptive parent(s) from all or part of the verification requirements in paragraph (a)(1) of this section, from the training requirements in paragraph (c)(1)(i) of this section, or from the certification requirements in paragraph (c)(1)(ii) of this section, but may exempt prospective adoptive parents from completing all or part of the training requirements referenced in paragraphs (a) and (b) of this section when:

(1) The agency or person confirms that no more than 24 months have elapsed since the prospective adoptive parent(s) satisfactorily completed identical training; and

(2) The agency or person determines that such previous training was adequate.

(h) The agency or person records the dates, nature, and extent of the training and preparation provided to the prospective adoptive parent(s) including, but not limited to, all of the training required in paragraphs (a)

through (c) and (e) and (f) of this section in the adoption record.

■ 32. Revise § 96.50(c), (d), and (h) to read as follows:

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

\* \* \* \* \*

(c) When a placement for adoption is in crisis in the post-placement phase, the agency or person takes all appropriate measures to provide or arrange for counseling by an individual or entity with appropriate skills to assist the family in dealing with the problems that have arisen; informs the parents of local and State laws and legal resources pertaining to disruption of placements and dissolution of adoptions and appropriate measures for making another placement of the child; explains potential risks to the child; and provides resources for addressing potential future crises including dissolution.

(d) If counseling does not succeed in resolving the crisis and the placement is disrupted, the agency or person assuming custody of the child assumes responsibility for making another placement of the child, in accordance with the agency's or person's written policy for handling disruptions.

\* \* \* \* \*

(h) The agency or person takes steps to:

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

(2)(i) Notify the Secretary of the finalization of the adoption within thirty days of the entry of the order; or

(ii) Notify the Secretary of the disruption of, or where appropriate, the intent to disrupt, the placement within 24 hours, and sooner than that if possible, upon learning of such information.

■ 33. Revise § 96.51(b), (c), and (d) to read as follows:

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

\* \* \* \* \*

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

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

(c) When post-adoption reports are required by the child's country of origin, the agency or person includes a requirement for such reports in the adoption services contract and takes all appropriate measures to encourage adoptive parent(s) to provide such reports, and notifies the Secretary in the event an adoptive parent(s) refuses to comply with such requirements.

(d) The agency or person notifies the Secretary of the dissolution of, or where appropriate, the intent to dissolve a final adoption immediately upon discovering such information. 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.

■ 34. Amend § 96.52 by revising paragraph (b)(1) and adding paragraph (f) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

(f) The agency or person will notify the Secretary of the disruption of a placement or dissolution of an adoption immediately, or within 24 hours, and sooner than that if possible, upon discovering such information and, in consultation with the Secretary, take appropriate steps to notify the Central Authority or other competent authority in the child's country of origin.

**§ 96.53 [Amended]**

■ 35. Amend § 96.53(a)(2) by removing the semicolon from the end of the paragraph and adding a semicolon after "section".

■ 36. Amend § 96.60(b) by adding a sentence to the end of the paragraph to read as follows:

**§ 96.60 Length of accreditation or approval period.**

\* \* \* \* \*

(b) \* \* \* For agencies and persons that meet these two criteria, the Secretary, in his or her discretion, may consider additional factors in deciding

upon an extension including, but not limited to, the agency's or person's volume of intercountry adoption cases in the year preceding the application for renewal or extension, the agency's or person's State licensure record, and the number of extensions available.

### Subpart I—Routine Oversight by Accrediting Entities

#### ■ 37. Amend § 96.66:

- a. In paragraph (a) by removing “investigate” from the last sentence and adding in its place “review”; and
- b. By revising paragraph (b) and adding paragraph (d).

The additions and revisions read as follows:

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

\* \* \* \* \*

(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 review 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. If an agency or person fails to provide requested documents or information within a reasonable time, or to make employees available as requested, or engages in deliberate destruction of documentation during the accreditation process or any subsequent investigation or review, the accrediting entity may deny accreditation or approval or, in the case of an accredited agency or approved person, take appropriate adverse action against the agency or person solely on that basis.

\* \* \* \* \*

(d) The accrediting entity must require accredited agencies and approved persons to self-report significant changes and occurrences, pursuant to the accrediting entity's policies and procedures, to demonstrate their ongoing compliance with the standards and to maintain up to date contact information and data.

### Subpart J—Oversight Through Review of Complaints

- 38. Revise § 96.68 to read as follows:

#### § 96.68 Scope.

The provisions in this subpart establish the procedures that will be used for reviewing complaints against

accredited agencies and approved persons (including complaints concerning their use of supervised providers and verification of adoption services of foreign providers) that raise an issue of compliance with the Convention, the IAA, the UAA, or the regulations implementing the IAA or UAA, as determined by the accrediting entity or the Secretary, and that are therefore relevant to the oversight functions of the accrediting entity or the Secretary.

- 39. Revise § 96.69(b) to read as follows:

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

\* \* \* \* \*

(b) Complaints against accredited agencies and approved persons that raise an issue of compliance with the Convention, the IAA, the UAA, or the regulations implementing the IAA or UAA by parties to specific intercountry adoption cases and relating to that case may first be submitted by the complainant in writing to the primary provider and to the agency or person providing adoption services, if a U.S. provider is different from the primary provider, or the complaint may be filed immediately with the Complaint Registry in accordance with § 96.70. If the complainant considers that a complaint that was submitted to the complaint processes of the primary provider or the agency or person providing the services (if different) has not been resolved through that process, or if a complaint that it so submitted is resolved by an agreement to take action but the primary provider or the agency or person providing the service (if different) fails to take such action within thirty days of agreeing to do so, the complaint may also be filed with the Complaint Registry in accordance with § 96.70.

\* \* \* \* \*

- 40. Amend § 96.70:

- a. In paragraph (a) by removing “establish” from the first sentence and adding in its place “maintain”; and
- b. By revising paragraph (b)(1) to read as follows:

#### § 96.70 Operation of the Complaint Registry.

\* \* \* \* \*

(b) \* \* \*

(1) Receive and maintain records of complaints about accredited agencies and approved persons, including complaints concerning their use of supervised providers and verification of adoption services provided by foreign providers and complaints regarding compliance with CSA, and make such

complaints available to the appropriate accrediting entity and the Secretary.

\* \* \* \* \*

#### § 96.71 [Amended]

- 41. Amend § 96.71:

- a. In paragraph (a) by removing “investigating” from the first sentence and adding in its place “reviewing”;
- b. In paragraph (b)(1) by removing “that” and adding in its place “whether”; and
- c. In paragraph (c) by removing “investigation” from the first sentence, and adding in its place “review”.
- 42. Revise § 96.72(b)(2) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(2) In violation of the INA (8 U.S.C. 1101 *et seq.*); or

\* \* \* \* \*

### Subpart K—Adverse Action by the Accrediting Entity

#### § 96.77 [Amended]

- 43. Amend § 96.77 by removing “§§ 96.33(e)” and adding in its place “§§ 96.33(f)”, in paragraphs (b) and (c).

#### § 96.79 [Amended]

- 44. Amend § 96.79(c) by removing the words “The United States district court shall review the adverse action in accordance with 5 U.S.C. 706.”

#### § 96.87 [Amended]

- 45. Amend § 96.87 by removing “§§ 96.33(e)” and adding in its place “§§ 96.33(f)”.
- 46. Add subpart N to read as follows:

### Subpart N—Country Specific Authorization

Sec.

96.95 Scope.

96.96 Country specific authorization determined by the Secretary.

96.97 Application for CSA, length of CSA, reapplication.

96.98 Renewal of CSA; transfer of cases when renewal not sought.

96.99 Oversight of CSA by the accrediting entity.

96.100 Oversight of CSA through filing of complaints against accredited agencies and approved persons.

96.101 Review by the accrediting entity of complaints relating to compliance with CSA against accredited agencies and approved persons.

96.102 Referral of complaints relating to CSA to the Secretary and other authorities.

96.103 Adverse action against accredited agencies or approved persons not in substantial compliance with CSA.

- 96.104 Procedures governing CSA-related adverse action by the accrediting entity.
- 96.105 Responsibilities of the accredited agency, approved person, and accrediting entity following CSA-related adverse action by the accrediting entity.
- 96.106 Accrediting entity procedures to terminate CSA-related adverse action.
- 96.107 Administrative or judicial review of adverse action relating to CSA by the accrediting entity.
- 96.108 Oversight and monitoring of CSA by the Secretary.
- 96.109 Effective dates; transition.

#### **§ 96.95 Scope.**

This subpart applies when the Secretary, in his or her discretion, and in consultation with the Secretary of Homeland Security, determines that it is necessary to designate one or more countries for which an accredited agency or approved person must have country-specific authorization (CSA) in addition to accreditation or approval to act as primary provider under § 96.14(a) in connection with an intercountry adoption in those specified countries. Accreditation or approval is required for all agencies or persons who offer, provide, or facilitate the provision of any adoption service in the United States in connection with an intercountry adoption case, unless such agencies or persons are acting as supervised providers or exempted providers in that case. CSA is required for accredited agencies or approved persons to offer, provide, facilitate, verify, or supervise the provision of adoption services, except as a supervised provider or an exempted provider, in intercountry adoption cases with respect to a particular country designated for CSA.

#### **§ 96.96 Country specific authorization determined by the Secretary.**

(a) The Secretary may, in his or her discretion, in consultation with the Secretary of Homeland Security, determine that CSA is required for accredited agencies or approved persons to act as a primary provider in intercountry adoption cases with a particular foreign country. The Secretary will publish in the **Federal Register** a list of countries for which CSA is required. Changes to that list will also be announced via a **Federal Register** notice.

(b) An accrediting entity or approved person that has received CSA from an accrediting entity and meets the requirements of § 96.97, may act as a primary provider in intercountry adoption cases with respect to the specific foreign country.

(c) In each intercountry adoption case with a country designated by the

Secretary as requiring CSA, an accredited agency or approved person with the applicable CSA must act as the primary provider.

(d) CSA does not constitute authorization from a foreign government to engage in activities related to intercountry adoption. However, CSA ceases automatically and immediately upon the corresponding foreign country's withdrawal or cancellation of its authorization of the agency or person.

(e) To receive CSA, accrediting entities may also require an accredited agency or approved person to demonstrate that it is in substantial compliance with one or more selected accreditation and approval standards in subpart F of this part, as determined using a method approved by the Secretary, in consultation with the Secretary of Homeland Security, that may include:

- (1) Increasing the weight of selected standards from subpart F; and
- (2) Requiring the provision of additional or specified evidence to support compliance with selected standards from subpart F.

#### **§ 96.97 Application for CSA, length of CSA, reapplication.**

(a) *Application procedures.* The accrediting entity will establish application procedures for CSA. The procedures must be consistent with this section and be approved by the Secretary. Application for CSA is subject to any relevant provisions of an accrediting entity's fee schedule. CSA is governed by the relevant terms of the accrediting entity's rating method in § 96.27(d) and any applicable addenda thereto that contain country specific compliance criteria, published by the accrediting entity and approved by the Secretary.

(b) *Timing of application for CSA.* The application procedures for CSA may provide that application occurs, to the extent possible, concurrently with the initial application for accreditation or approval in accordance with subpart D or at renewal pursuant to the process outlined in subpart H. These procedures must also establish the process for an accredited agency or approved person to apply for CSA for a foreign country after its initial application for accreditation or approval or its renewal application.

(c) The accrediting entity must routinely inform applicants in writing of its decisions on their CSA applications—whether an application has been granted or denied—when those decisions are finalized. The accrediting entity must routinely provide this information to the Secretary in writing.

(d) The accrediting entity may, in its discretion, communicate with agencies and persons that have applied for CSA about the status of their pending applications to afford them an opportunity to correct deficiencies that may hinder or prevent approval of CSA.

(e) *Length of CSA.* The initial period of CSA will extend from the date CSA is granted until the end of the agency's or person's current period of accreditation or approval, except that a grant of CSA will not be for less than three years and will not exceed five years. In cases where an agency's accreditation or a person's approval will end before the minimum three years for CSA has passed, CSA will be suspended until the accreditation or approval has been renewed. Notwithstanding the CSA period granted, the CSA period ends upon the suspension or cancellation of the agency's accreditation or person's approval or the agency's or person's debarment by the Secretary.

(f) *Review of decisions to deny CSA.* (1) There is no administrative or judicial review of an accrediting entity's decision to deny an application for CSA. As provided in § 96.107, the decision to deny includes:

- (i) A denial of the agency's or person's initial application for CSA;
- (ii) A denial of an application made after cancellation or refusal to renew by the accrediting entity; and
- (iii) A denial of an application made after cancellation or debarment by the Secretary.

(2) 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.

#### **§ 96.98 Renewal of CSA; transfer of cases when renewal not sought.**

(a) The accrediting entity must advise accredited agencies and approved persons that it monitors the date by which they should seek renewal of CSA so that the renewal process can reasonably be completed prior to the expiration of the agency's or person's current accreditation or approval. Consistent with § 96.63, if the accredited agency or approved person does not wish to renew CSA, it must immediately notify the accrediting entity and take all necessary steps to complete its intercountry adoption cases and to transfer its pending intercountry adoption cases and adoption records to other accredited agencies or approved persons with the applicable CSA, or a

State archive, as appropriate, under the oversight of the accrediting entity, before its CSA expires.

(b) The accredited agency or approved person may seek renewal of CSA 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 new accrediting entity's instructions when submitting a request for renewal and preparing documents and other information for the new accrediting entity to review in connection with the renewal request.

(c) The accrediting entity must process the request for CSA renewal in a timely fashion. Before deciding whether to renew CSA, 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 notify the accredited agency, approved person, and the Secretary in writing when it renews or refuses to renew an agency's or person's CSA.

(d) Sections 96.24, 96.25, and 96.26, which relate to evaluation procedures and to requests for and use of information, and § 96.27, which relates to the procedures and substantive criteria for evaluating applicants for accreditation or approval or CSA will govern determinations about whether to renew accreditation or approval or make a CSA determination.

#### **§ 96.99 Oversight of CSA by the accrediting entity.**

(a) The accrediting entity must monitor agencies to whom it has granted CSA at least annually to ensure that they are in substantial compliance with the compliance criteria for the standards in subpart F of this part, as determined using a method approved by the Secretary in accordance with § 96.27(d). The accrediting entity must review 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 with respect to CSA or to investigate a complaint relating to compliance with CSA. 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.

(c) The accrediting entity must require accredited agencies or approved persons to attest annually that they have remained in substantial compliance with applicable CSA criteria and to provide supporting documentation to indicate such ongoing compliance with the applicable standards in subpart F of this part.

#### **§ 96.100 Oversight of CSA through filing of complaints against accredited agencies and approved persons.**

(a) Complaints relating to CSA will be subject to review by the accrediting entity pursuant to § 96.101, when submitted as provided in this section and § 96.70.

(b) Complaints related to compliance with CSA against accredited agencies and approved persons that raise an issue of compliance with one or more of the accreditation and approval standards in subpart F of this part may be submitted in accordance with § 96.69.

(c) An individual who is not party to a specific intercountry adoption case but who has information about an accredited agency or approved person may provide that information by filing it in the form of a complaint with the Complaint Registry in accordance with § 96.70.

(d) A Federal, State, or local government official or a foreign Central Authority may file a complaint with the Complaint Registry in accordance with § 96.70, or may raise the matter in writing directly with the accrediting entity, who will record the complaint in the Complaint Registry, or with the Secretary, who will record the complaint in the Complaint Registry, if appropriate, and refer it to the accrediting entity for review pursuant to § 96.71 or take such other action as the Secretary deems appropriate.

#### **§ 96.101 Review by the accrediting entity of complaints relating to compliance with CSA against accredited agencies and approved persons.**

(a) The accrediting entity must establish written procedures, including deadlines, for recording, reviewing, and acting upon complaints relating to compliance with CSA that it receives pursuant to §§ 96.69 and 96.70(b)(1). 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 relating to CSA raises an issue of compliance with one or more of the accreditation and approval standards in subpart F of this part:

(1) The accrediting entity must verify whether the complainant has already attempted to resolve the complaint as described in § 96.69(b) 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 any relevant accredited agency or approved person holding CSA may maintain CSA 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 pursuant to § 96.69(d); and

(3) If the accrediting entity determines that the agency or person may not maintain CSA, it must take adverse action pursuant to section § 96.103.

(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, or to any other entity that referred the information.

(d) The accrediting entity will enter information about the outcomes of its investigations and its actions on complaints into the Complaint Registry as provided in its agreement with the Secretary.

(e) 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 related to compliance with CSA of an accredited agency, an approved person, or the accrediting entity.

#### **§ 96.102 Referral of complaints relating to CSA to the Secretary and other authorities.**

(a) An accrediting entity must report promptly to the Secretary any substantiated complaint related to compliance with CSA 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 increased evidentiary requirements and weight of standards in subpart F of this part; or

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

(b) An accrediting entity must, after consultation with the Secretary, refer, as appropriate, to a State licensing authority, the Attorney General, or other law enforcement authorities any substantiated complaints related to compliance with CSA that involve conduct that is:

(1) Subject to the civil or criminal penalties imposed by section 404 of the IAA (42 U.S.C. 14944);

(2) In violation of the INA (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 paragraph (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.

**§ 96.103 Adverse action against accredited agencies or approved persons not in substantial compliance with CSA.**

(a) The accrediting entity must take adverse action when it determines that an accredited agency or approved person with CSA may not maintain CSA as provided in § 96.27(d). 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 a CSA-related adverse action for purposes of the regulations in this part:

(1) Suspending CSA;

(2) Canceling CSA;

(3) Refusing to renew CSA;

(4) Requiring an accredited agency or approved person to take a specific corrective action with respect to CSA to bring itself into compliance; and

(5) 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 foreign country.

(b) A CSA-related adverse action taken under this section relates only to an agency's or person's CSA. Such adverse action may be relevant to, but is not controlling of, adverse action related to accreditation and approval under § 96.75.

**§ 96.104 Procedures governing CSA-related adverse action by the accrediting entity.**

(a) The accrediting entity must decide which CSA-related 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 its decision to take a CSA-related adverse action against the agency or person. The accrediting entity's written notice must identify the deficiencies prompting imposition of the CSA-related adverse action.

(b) Before taking a CSA-related adverse action, the accrediting entity may, in its discretion, advise an accredited agency or approved person in writing of any deficiencies in its performance that may warrant a CSA-related adverse action and provide it with an opportunity to demonstrate that a CSA-related adverse action would be unwarranted before the CSA-related adverse action is imposed. If the accrediting entity takes the CSA-related adverse action without such prior notice, it must provide a similar opportunity to demonstrate that the CSA-related adverse action was unwarranted after the CSA-related adverse action is imposed, and may withdraw the CSA-related adverse action based on the information provided.

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

**§ 96.105 Responsibilities of the accredited agency, approved person, and accrediting entity following CSA-related adverse action by the accrediting entity.**

(a) If the accrediting entity takes a CSA-related 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 agency's or person's CSA, the agency or person must immediately, or by any later effective date set by the accrediting entity, cease to provide adoption services in all intercountry adoption cases relating to the corresponding foreign country. All procedures in § 96.77(b) governing the transfer of cases apply, except that the accredited agencies or approved persons that assume responsibility for transferred cases must have the applicable CSA.

(c) If the accrediting entity refuses to renew the CSA of an agency or person, the agency or person must cease to provide adoption services in all foreign countries corresponding to that CSA by the expiration of the earlier of either the agency's or person's CSA or the agency's or person's accreditation or approval. It must take all necessary steps to complete its intercountry adoption cases

in those foreign countries before its CSA expires. All procedures in § 96.77(c) governing the transfer of cases apply, except that, to the extent possible, the accredited agencies or approved persons that assume responsibility for transferred cases must have the applicable CSA.

(d) The accrediting entity must notify the Secretary, in accordance with procedures established in its agreement with the Secretary, when it takes an adverse action that changes the CSA status of an agency or person. The accrediting entity must also notify the relevant State licensing authority as provided in the agreement.

**§ 96.106 Accrediting entity procedures to terminate CSA-related adverse action.**

(a) The accrediting entity must maintain internal petition procedures, approved by the Secretary, to give accredited agencies and approved persons an opportunity to terminate CSA-related adverse actions on the grounds that the deficiencies necessitating the adverse action have been corrected. The accrediting entity must inform the agency or person of these procedures when it informs them of the CSA-related adverse action pursuant to § 96.104(a). An accrediting entity is not required to maintain procedures to terminate CSA-related adverse actions on any other grounds, or to maintain procedures to review its CSA-related adverse actions, and must obtain the consent of the Secretary if it wishes to make such procedures available.

(b) An accrediting entity may terminate a CSA-related adverse action it has taken only if the agency or person demonstrates to the satisfaction of the accrediting entity that the deficiencies that led to the CSA-related 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 CSA-related adverse action.

(c) If the accrediting entity described in paragraph (b) 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.

(d) If the accrediting entity cancels or refuses to renew CSA, and does not terminate the CSA-related adverse action pursuant to paragraph (b) of this section, the agency or person may reapply for CSA. 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 CSA or, if such entity is no longer

designated as an accrediting entity, from any alternate accrediting entity designated by the Secretary to give such permission. 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 CSA cancellation or refusal to renew CSA have been corrected.

(e) 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.

(f) Nothing in this section shall be construed to prevent an accrediting entity from withdrawing a CSA-related adverse action if it concludes that the action was based on a mistake of fact or was otherwise in error. Upon taking such action, the accrediting entity will take appropriate steps to notify the Secretary and the Secretary will take appropriate steps to notify the relevant authorities or entities.

**§ 96.107 Administrative or judicial review of adverse action relating to CSA by the accrediting entity.**

(a) Except to the extent provided by the procedures in § 96.106, a CSA-related adverse action by an accrediting entity shall not be subject to administrative review.

(b) Section 202(c)(3) of the IAA (42 U.S.C. 14922(c)(3)) provides for judicial review in Federal court of adverse actions by an accrediting entity, regardless of whether the entity is described in § 96.5(a) or (b). When any petition brought under section 202(c)(3) raises an issue whether the deficiencies necessitating the CSA-related adverse action have been corrected, the procedures maintained by the accrediting entity pursuant to § 96.106 must first be exhausted. CSA-related adverse actions are only those actions listed in § 96.103. There is no judicial review of an accrediting entity's decision to deny CSA, 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 (42 U.S.C. 14922(c)(3)), an accredited agency or approved person that is the subject of a CSA-related 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. When an accredited agency or approved person petitions a United States district court to review the CSA-related 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.

**§ 96.108 Oversight and monitoring of CSA by the Secretary.**

(a) *The Secretary's response to CSA related actions by the accrediting entity.* There is no administrative review by the Secretary of an accrediting entity's decision to deny CSA, or of any decision by an accrediting entity to take CSA-related adverse action.

(b) *Suspension or cancellation of CSA by the Secretary.* (1) The Secretary must suspend or cancel the CSA granted by an accrediting entity when the Secretary finds, in the Secretary's discretion, that the agency or person is substantially out of compliance with the relevant standards in subpart F of this part and that the accrediting entity has failed or refused, after consultation with the Secretary, to take action.

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

- (i) Will protect the interests of children;
- (ii) Will further U.S. foreign policy or national security interests; or
- (iii) Will protect the ability of U.S. citizens to adopt children.

(3) If the Secretary suspends or cancels the CSA of an agency or person, the Secretary will take appropriate steps to notify the accrediting entity, the Permanent Bureau of the Hague Conference on Private International Law, and the applicable foreign country, as appropriate.

(c) *Reinstatement of CSA after suspension or cancellation by the Secretary.* (1) An agency or person may petition the Secretary for relief from the Secretary's suspension or cancellation of CSA on the grounds that the deficiencies necessitating the suspension or cancellation have been corrected. If the Secretary is satisfied that the deficiencies that led to the suspension or cancellation have been corrected, the Secretary shall, in the case of a suspension, terminate the suspension or, in the case of a cancellation, notify the agency or person that it may reapply for CSA 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 CSA, the Secretary will so notify the appropriate accrediting entity as well as the applicable foreign country, as appropriate.

(2) Nothing in this section shall be construed to prevent the Secretary from withdrawing a cancellation or suspension if the Secretary concludes that the action was based on a mistake of fact or was otherwise in error. Upon taking such action, the Secretary will take appropriate steps to notify the accrediting entity, the Permanent Bureau of the Hague Conference on Private International Law, and the applicable foreign country, as appropriate.

**§ 96.109 Effective dates; transition.**

(a) When the Secretary designates a country for CSA, the Secretary, in consultation with the Secretary of Homeland Security, will establish and announce through a **Federal Register** notice an effective date by which CSA for that country is required.

(b) On and after the effective date described in paragraph (a) of this section, CSA is required in accordance with this subpart, except:

(1) In the case of a child immigrating to the United States, CSA is not required if the prospective adoptive parents of the child filed the applicable immigration related application or petition as prescribed by USCIS before the effective date described in paragraph (a) of this section, and the Secretary, in consultation with the Secretary of Homeland Security, determines that the circumstances underlying CSA do not compel requiring CSA for that case; or

(2) In the case of a child emigrating from the United States, CSA is not required if the prospective adoptive parents of the child initiated the adoption process in their country of residence with the filing of an appropriate application before the effective date described in paragraph (a) of this section and the Secretary determines that the circumstances underlying CSA do not compel requiring CSA for that case.

Dated: August 23, 2016.

**David T. Donahue,**

*Acting Assistant Secretary for Consular Affairs, U.S. Department of State.*

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