

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

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

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

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

E. Economic Impact/Effect on Small Entities

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

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

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

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

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