

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

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

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

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

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

E. Timing of Implementation

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

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

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

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

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

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

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