

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

F. The IAA Exemptions to the Paperwork Reduction Act

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

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

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

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

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

necessary to meet our Convention obligations.

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

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