

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

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

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

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

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

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

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

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

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

V. The Proposed Implementing Regulations on Accreditation and Approval

A. Public Input on the Proposed Regulations

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

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

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