

Department had to adapt the work product of Acton Burnell into a Federal regulatory format and to address a number of issues that had not been raised or addressed during the preliminary public input phase. These regulations are now published for notice and comment under the APA, 5 U.S.C. 553, as required by the IAA.

C. Overview of the Proposed Regulations

These regulations contain the following sections: Subpart A contains the definitions governing the use of defined terms throughout these regulations. Subpart B sets forth the process by which the Department will designate one or more accrediting entities to perform the accreditation and approval functions and describes the authority and responsibilities of accrediting entities. Subpart C articulates the accreditation and approval requirements of the IAA by describing which entities are covered by the IAA's requirements, delineating the exceptions to those requirements, and addressing the responsibilities of public bodies that provide adoption services in Convention cases. Subparts D and E describe the process for seeking and being evaluated for accreditation or approval. Subpart F sets forth in detail the standards for accreditation and approval, including the parameters and requirements for working with entities or individuals in the United States or in other Convention countries that are not accredited or approved but will act under the supervision and responsibility of an agency or person accredited or approved in the United States. Subparts G and H address notification of accreditation and approval decisions and the process for renewing accreditation or approval. Subparts I, J, K, and L cover monitoring of and complaints against accredited agencies and approved persons, adverse actions against accredited agencies or approved persons by the accrediting entity, and suspension, cancellation, or debarment of accredited agencies or approved persons by the Secretary. Subpart M addresses how and under what circumstances the accrediting entities will disseminate and report information about accredited agencies and approved persons to the public and to the Secretary. Finally, subpart N sets forth the procedures and standards for temporary accreditation.

1. Subpart A—General Provisions

Subpart A contains the definitions for part 96. Most of the definitions are taken directly from the IAA. If a specific definition substantially affects a particular provision in the proposed

regulation, the definition typically is addressed below in the context of discussion of that provision. The IAA definition of Convention adoption, however, has ramifications throughout the regulations, and thus is addressed in this introductory section.

The definition for Convention adoption was difficult to draft because the Convention and the IAA contain differently worded rules for when the Convention will apply to a particular intercountry adoption. Article 2 of the Convention, provides: "the Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State ('the receiving State') either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin." (S. Treaty Doc. 105–51, Art. 2). Under the IAA, however, a Convention adoption is defined as an adoption of a child resident in a foreign country party to the Convention by a U.S. citizen, or an adoption of a child resident in the United States by an individual residing in another Convention country. (Pub. L. 106–279, 3(10)).

The regulations attempt to clarify the IAA definition of Convention adoption and to harmonize the Convention and the IAA definitions. The IAA definition of Convention adoption, taken literally, would include every adoption in a Convention country by a U.S. citizen. For example, the definition would include children outside the United States adopted in accordance with a country's adoption procedures by a U.S. citizen parent who did not intend to move the child back to the United States. In such situations, the country of origin usually does not treat the adoption as an intercountry adoption covered by the Convention and thus requiring the use of accredited agencies or approved persons. The Department does not believe that the intent of the IAA or the Convention was to treat all adoptions of children in a Convention country by a U.S. citizen parent as intercountry adoptions covered by the Convention. Therefore, the definition of Convention adoption in § 96.2 construes the IAA definition of Convention adoption by specifying the requirement that the child, in connection with his or her adoption, must have moved, or there must be an intent to move the child, from one Convention country to another Convention country. This interpretation of the IAA definition of Convention adoption is intended to make clear that adoptions by a U.S. citizen residing

abroad, even in a country party to the Convention, are not always automatically intercountry adoptions covered by the Convention where the adopting parent is a U.S. citizen. The Department welcomes comment on the definition of Convention adoption, especially from those organizations or agencies and persons who assist U.S. citizens residing abroad with adoptions and from prospective and adoptive parents living abroad as well.

2. Subpart B—Selection, Designation, and Duties of Accrediting Entities

Subpart B addresses the Department's designation of accrediting entities. The Department will designate one or more private, non-profit organizations or State-based authorities to act as accrediting entities and enter into agreements with them for this purpose. Such entities will have responsibility for: Evaluating the eligibility of agencies and persons for accreditation or approval and granting or denying accreditation or approval; determining whether to renew accreditation or approval; monitoring and addressing complaints against accredited agencies and approved persons; taking adverse action against accredited agencies and approved persons; and disseminating and reporting information about accredited agencies and approved persons. Subpart B sets forth the eligibility criteria for designation as an accrediting entity, additional requirements for designation, the authorities and responsibilities of accrediting entities, the general content of the Agreement, and what actions the Department may take against an accrediting entity that fails to fulfill its responsibilities as set forth in these regulations or the Agreement.

Subpart B also sets forth the procedures and requirements accrediting entities must follow when setting a fee schedule. Accrediting entities may only charge fees on a cost-recovery basis, and the Department must approve the fee schedule. Additionally, an accrediting entity must make such fee schedules available to the public upon request and specify the fees to be charged to an applicant in a contract between the accrediting entity and the applicant.

Several aspects of the proposed regulations relating to fees deserve particular note. First, the Secretary may require a portion of the fee to cover the Complaint Registry. Second, applicants will pay a single fee that will cover both the pre- and post-accreditation/approval work of any accrediting entity. The fee will be non-refundable even if an application is denied.